

BEFORE THE BOARD OF TRUSTEES
OF THE HOLLISTER SCHOOL DISTRICT
SAN BENITO COUNTY, CALIFORNIA

In the Matter of the Accusations Against:

CHRISTOPHER BERRY, et al,

Respondents.

OAH No. 2008030423

PROPOSED DECISION

This matter was heard before Steven C. Owyang, Administrative Law Judge, State of California, Office of Administrative Hearings, in Hollister, California, on April 24, 2008.

Attorney Janae Novotny, Kay & Stevens, represented the Hollister School District.

Attorney Michelle A. Welsh, Stoner, Welsh & Schmidt, represented respondents Christopher Berry, Julia Brantome, Roger Brown, Summer Chamblin, Marilyn Cline, Dawn Daugherty, William Deacon, Katherine DeLaMere, Julie Fontaine, Jamie Fowles, Kimberly Gaither, Carolina Gomez, Alec Griffin, Micaela Hedden, Matthew Hudson, Lisa Jelinick, Kenneth Johnson, Nancy Kerl, Deanna Lane, Robert Lincoln, Roxane Lino, Marcia Littleton, DeAnna Macias-Cortez, Morgan Marquez, Kellie Pellin, Virginia Pender, Timothy Peters, Michelle Record, Samantha Rivas, Jose Rivera, Kathy Ruiz, Elizabeth Schneider, Lisa Sinclair, Olympia Soto, Barbara Taddeo, and Gabriel Talavera.

Post-hearing briefs were filed and the matter was submitted on April 29, 2008.

FACTUAL FINDINGS

1. Ronald F. Crates, Superintendent, Hollister School District, made and filed the accusations in his official capacity.
2. On March 4, 2008, upon the recommendation of Superintendent Crates, the board of trustees of the Hollister School District adopted Resolution No. 16:07-08, which authorized the reduction or discontinuance of particular kinds of services of 60.62 FTE (full-time equivalent) certificated positions in the 2008 – 2009 school year. The resolution also authorized the reduction of 9.0 FTE certificated positions due to a decline in average daily attendance (ADA). The board directed the superintendent or his designee to send notice to certificated employees that their services would be terminated at the end of the 2007 – 2008 school year.

3. At hearing, the district withdrew the 9.0 FTE ADA reduction. The district also amended the particular kinds of services to be reduced or eliminated to 36.72 FTE. Thus, the following FTE reductions are at issue:

Administrative Services – Coordinator	1.0 FTE
Kindergarten Teacher	4.0
First Grade Teacher	2.0
Second Grade Teacher	2.0
Third Grade Teacher	2.0
Fourth Grade Teacher	4.0
Fifth Grade Teacher	3.0
Adaptive Physical Education Teacher	1.0
GATE Teacher	0.5
Intervention Teacher	0.6
Literacy Coach	1.0
Newcomer Teacher	1.0
Reading Intervention Teacher	0.5
Resource Teacher	4.0
School Counselor	0.4
School Nurse	0.22
Teacher on Special Assignment	1.5
Language Arts Teacher – Middle School	4.0
Physical Education Teacher – Middle School	2.0
Social Studies Teacher – Middle School	2.0
TOTAL	36.72 FTE

4. The district anticipates that it will have a budget reduction of approximately \$3.1 million for the 2008 – 2009 school year. The particular kinds of services listed in Factual Finding 3 are being reduced or eliminated in order to meet the budget reduction. These services are particular kinds of service that may be reduced or discontinued within the meaning of Education Code section 44955. The district is also reducing services provided by administrators and classified employees.

5. Respondents are full-time or part-time certificated employees of the district. All respondents were properly and timely served with notice of layoff. All respondents were properly and timely served an accusation, statement to respondent, notice of defense, notice of hearing, and relevant statutes. All jurisdictional requirements of Education Code sections 44949 and 44955 have been met.

6. The district has withdrawn the accusations previously issued against Summer Chamblin, Marilyn Cline, Kimberly Gaither, Alec Griffin, Matthew Hudson, Kenneth Johnson, Morgan Marquez, Virginia Pender, and Timothy Peters. The accusations against them will be dismissed.

7. The district served non-reelection notices on probationary certificated employees Amy Anderson, Roger Brown, Steven DeCaro, Francisco Eclarin, Leigh Hill, Deborah Kampf, Deanna Lane, Elizabeth Rogers, Matthew Romiti, Pamela Smith, and Barbara Taddeo. The employees were non-reelected pursuant to Education Code section 44929.21 and are outside the jurisdiction of these proceedings.

8. The district took attrition before and after March 15, 2008, into account in determining the number of teachers to receive layoff notices and in withdrawing accusations issued to various respondents. The attrition considered by the district included probationary employee non-reelections, resignations, retirements, temporary teacher releases, and approved certificated employee leave of absence requests for 2008 – 2009.

9. The district will comply with state mandates and provisions of the collective bargaining agreement with the Hollister Elementary Teachers Association regarding class size.

10. The proposed reductions and discontinuances of particular kinds of services will not reduce district services below legally mandated levels.

11. On February 5, 2008, the district's board of trustees adopted Resolution No. 14:07-08. The resolution set forth six criteria ("tie breaker criteria"), "not in order of priority," to be used in determining the order of termination of certificated employees first rendering paid service to the district on the same date:

- 1) Breadth of credential authorization.
 - Multiple credentials, allowing flexibility of assignment and ability to undertake multiple assignments as District's needs change.
- 2) No Child Left Behind highly qualified teacher status for current assignment[.]
- 3) Advanced degrees in current assignment or credential-related subject areas[.]
- 4) Greatest number of post-BA accredited college units on file with the District in current assignment or credential-related areas[.]
- 5) Teaching experience in multiple subjects or grade levels in areas of anticipated need.
- 6) Greatest number of years teaching in California public elementary and secondary schools outside the District.

The resolution directed the superintendent or his designee "to apply the adopted criteria to the affected employees to determine order of termination as related to the needs of the District and its students."

12. On February 7, 2008, Assistant Superintendent Dennis Kurtz sent to teachers potentially impacted by the tie breaker criteria a memorandum explaining the procedure for applying the tie breaker criteria and attaching a tie breaker worksheet. The memorandum set forth point values to be assigned to the six tie breaker criteria adopted by the board:

Column 1: Breadth of Credential – For every credential, certificate or authorization *from the CCTC*, you receive 5 points. Certificates earned at workshops, and credentials not from California do not count.

Column 2: NCLB HQT status – Most teachers are Highly Qualified, and receive 10 points. If you are assigned in a subject area not requiring you to be 'Highly Qualified', then you receive 5 points. Only teachers who should have HQT status, but for some reason do not, receive 0 points.

Column 3: Advanced Degrees – For every Masters or Doctorate from an accredited university that we have on file as of September 10, 2007, you receive 5 points.

Column 4: # of Post-Baccalaureate Accredited College Units – For each semester unit, you receive 1 point. The Baccalaureate can be either a BA or BS; transcripts had to have been on file in the District Office as of September 10, 2007.

Column 5: Teaching Experience in multiple subjects/grade levels – This one is complicated. The intent is to give greater credit to those teachers who have taught at more than one grade level, or in more than one subject area at the middle school level. For every different such assignment in the Hollister School District, you receive 2 points, provided you taught in that assignment for a year or more (1 point for half a year or for a semester). So, some examples; if you have taught the same grade level for 5 years, you receive 2 points. If you have taught for 5 years – 2 years at 2nd grade and 3 years at 1st grade – you receive 4 points. If you started in Kindergarten, and then changed mid-year for some reason to 1st grade, followed by an entire year in 1st grade, then you receive 3 points (1 for Kinder [*sic*] and 2 for 1st grade). Combination classes count double, so a year of teaching K/1 combo receives 4 points. In Middle School, for example, a teacher teaching both Language Arts and

Social Science in the 7th and 8th grades for a year receives 4 points. SDC and RSP teachers teach students at multiple grades; they receive 6 points for each assignment.

Column 6: # of Years teaching in California public schools –

You receive 1 point per year for every year taught in California, whether in Hollister or not, but only for public school service.

13. The district prefers to and does provide departmentalized instruction in its middle schools. Where departmentalized instruction is not feasible because of a lack of appropriately credentialed teachers, the district also provides “core” classes taught by teachers with multiple subject credentials, particularly in the sixth grade. Respondents assert that teachers holding multiple subject credentials are authorized to teach in “core” classes in the district’s middle schools and, “To the extent there are open positions in these CORE programs, Respondents holding Multiple Subject credentials should be retained to fill those vacancies in order of their seniority.” Respondents did not identify any such teachers.

14. Respondent Micaela Hedden has met the requirements for a BCLAD credential, applied for the credential in March 2008, but has not yet received it. The district is not required to recognize this credential for purposes of these proceedings.

15. Lisa Jelinick taught in the seventh and eighth grades in the 2007 – 2008 school year, but was not credited for that experience under the district’s tie breaker criteria. Ms. Jelinick contends, and the district acknowledges, that she should be awarded two additional tie breaker points. Ms. Jelinick has also completed the requirements for a single subject credential, except for a CPR (cardio pulmonary resuscitation) class that will be given in early May 2008. The district is not required to recognize this credential for purposes of these proceedings.

16. Nancy Kerl has completed a multiple subject credential program at California State University, Monterey Bay, but has not yet received her multiple subject credential. The district is not required to recognize this credential for purposes of these proceedings.

17. Michelle Record completed a six unit “NTP BTSA Year 1” course at the University of California Extension, Santa Cruz, in May 2007. She requested district recognition of those units in July 2007, but her request was “kicked back” because it lacked a principal’s signature. The request was not resubmitted until December 2007 or January 2008, after the September 10, 2007 date specified in the tie breaker memorandum. The district is not required to recognize the units for the purposes of computing Record’s tie breaker points.

18. Lisa Sinclair contends, and the district acknowledges, that she should have received an additional point for a year of teaching experience that the district failed to include in its computation of her tie breaker points.

19. Olympia Soto contends, and the evidence demonstrated, that she performed the duties normally required of a certificated employee for 75 percent or more of the number of school days the regular schools of the district were maintained in the 2004 – 2005. The district acknowledges that if this is the case, Soto's date of first paid service in the district is September 7, 2004.

20. Gabriel Talavera completed a 10 quarter unit "NTP BTSA Year 1" course at the University of California Extension, Santa Cruz, in May 2007. He seeks credit for 6.7 semester units (converted from quarter units) under the district's tie breaker criteria. He submitted those units for district recognition in July 2007, but his request was "kicked back" because it lacked a principal's signature. The request was not resubmitted until after the September 10, 2007 date specified in the tie breaker memorandum. The district is not required to recognize the units for the purposes of computing Talavera's tie breaker points.

21. No permanent or probationary employee with less seniority is being retained to render a service for which respondents are certificated and competent.

LEGAL CONCLUSIONS

1. Cause for the elimination of 36.72 FTE positions exists in accordance with Education Code sections 44949 and 44955. This cause relates solely to the welfare of the district and the pupils thereof.

2. Respondents contend that the District has not established that the layoffs are "related to the welfare of the schools and the pupils thereof" as required by Education Code section 44949, but this contention is without merit. In determining how to allocate its resources, a school district is given discretion to reduce or discontinue particular kinds of services. While almost any reduction or elimination of services is arguably detrimental to at least some students (not to mention school employees), in the absence of a showing that the district's decision is arbitrary or capricious, its action is related to the overall welfare of the schools and its pupils. In this case, the decision to reduce or discontinue particular kinds of services was neither arbitrary nor capricious but rather a proper exercise of the district's discretion.

3. The district took attrition into account in determining the number of teachers to receive layoff notices and in withdrawing accusations issued to various respondents.

4. Respondents contend that the district's administration had no authority to apply tie breaker criteria not authorized by the board of trustees in resolution 14:07-08. Respondents note that the resolution contained six criteria "not in order of priority" and did not refer to any "points" to be assigned to the criteria. Respondents assert that the point values set forth in Assistant Superintendent Kurtz's February 7, 2008 memorandum and worksheet was an "improper delegation of authority and an unauthorized modification of the criteria adopted by the Governing Board."

The board's delegation of authority to the superintendent or his designee to apply the tie breaker criteria was not improper. The administration's implementation of the board's tie breaker criteria through the point values set forth in Assistant Superintendent Kurtz's February 7, 2008 memorandum and worksheet were properly within the authority delegated by the board of trustees, with the possible exception of criterion 6 ("Greatest number of years teaching in California public elementary and secondary schools outside the District.") The February 7 memorandum granted one point per year "for every year taught in California, **whether in Hollister or not**, but only for public school service." (Emphasis added.) Thus, the February 7 memorandum granted tie breaker points for service in the district, whereas criterion 6 spoke only of service "outside the District." Respondents did not object to this apparent discrepancy and the evidence did not show that any respondent's layoff status was affected.

5. It was not shown that any respondent's layoff status was affected by the "core" versus "departmentalized" concerns raised by respondents.

6. The accusations against Summer Chamblin, Marilyn Cline, Kimberly Gaither, Alec Griffin, Matthew Hudson, Kenneth Johnson, Morgan Marquez, Virginia Pender, and Timothy Peters have been withdrawn and shall be dismissed. They are no longer respondents in this proceeding.

7. Lisa Jelinick shall receive two additional tie breaker points.

8. Lisa Sinclair shall receive an additional tie breaker point.

9. Olympia Soto's date of first paid service in the district shall be adjusted to September 7, 2004.

10. All contentions made by respondents not specifically addressed above are found to be without merit and are rejected.

ORDER

1. The accusations against Summer Chamblin, Marilyn Cline, Kimberly Gaither, Alec Griffin, Matthew Hudson, Kenneth Johnson, Morgan Marquez, Virginia Pender, and Timothy Peters are dismissed.


2. Lisa Jelinick shall receive two additional tie breaker points.

3. Lisa Sinclair shall receive an additional tie breaker point.

4. Olympia Soto's date of first paid service in the district shall be adjusted to September 7, 2004.

5. Notice may be given to respondents that their services will not be required for the 2008-2009 school year.

DATED: May 5, 2008


STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings