

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

In the Matter of the Non-reemployment of  
35.8 Full Time Equivalent Certificated  
Employees,

OAH No. 2008030352

Respondents.

**PROPOSED DECISION**

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Healdsburg, California, on April 23, 2008.

Lawrence W. Schoenke, Attorney at Law, Miller Brown and Dannis, represented complainant Robert J. Carter, Superintendent, Healdsburg Unified School District.

Michael A. Fiumara, Attorney at Law, Law Offices of Michael A. Fiumara, and Evan Livingstone, Attorney at Law, Of Counsel to the Law Offices of Michael A. Fiumara, represented respondents Mike Berry, Brandi Dickey, Marisol Hernandez, Tom Kirkpatrick, Kristen Koenig, Lisa Lidyoff, Christy Lubin, Aida Pacheco, Connie Petereit, Ann Rasella, Kathy Robinson, Denise Rose, Julie Stockly, Raeann Valladao, Jeanne Van der Zee, and Kay Webb.

There was no appearance by or on behalf of respondent Lise Melin.

The matter was submitted on April 23, 2008.

**FACTUAL FINDINGS**

1. Robert J. Carter made and filed the accusation in his official capacity as Superintendent of the Healdsburg Unified School District.
2. Respondents are certificated employees of the district.
3. On March 5, 2008, the district's governing board adopted Resolution No. 08-04 reducing particular kinds of services and directing the superintendent to give appropriate notices to certificated employees whose positions will be affected by the action (PKS resolution).

4. On or before March 15, 2008, Superintendent Carter gave written notice to 43 certificated employees, including respondents, of the recommendation that their services will not be required for the 2008-2009 school year. Each notice set forth the reasons for the recommendation.

5. Each of the 17 respondents filed a timely request for hearing to determine if there is cause for terminating his or her services for the 2008-2009 school year.

6. An accusation was served on each of the 17 respondents. All prehearing jurisdictional requirements were met as to each respondent.

7. With the exception of respondent Melin, each of the respondents filed a notice of defense.

8. In its PKS resolution, the governing board took action to reduce the following particular kinds of service for the 2008-2009 school year:

| PARTICULAR KINDS OF SERVICE-<br>Reductions and Eliminations           | NUMBER OF FULL-TIME<br>EQUIVALENT (FTE)<br>POSITIONS (including<br>preparation and travel periods<br>where applicable) |
|---|--|
| 1. Agricultural teaching position at Healdsburg High School           | .2 FTE   |
| 2. Elective teaching positions at Healdsburg High School              | .8 FTE   |
| 3. English teaching positions at Healdsburg High School – Grades 9-12 | 1.2 FTE  |
| 4. Social Science teaching position at Healdsburg High School         | .6 FTE   |
| 5. World Language teaching position at Healdsburg High School         | .4 FTE   |
| 6. Vocational Education teaching position at Healdsburg High School   | .4 FTE   |
| 7. Mathematics teaching positions at Healdsburg High School           | 1.6 FTE  |

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|---|---------|
| 8. Chemistry teaching position at Healdsburg High School  | 1.0 FTE |
| 9. Physical Education teaching position at Healdsburg High School                               | .2 FTE  |
| 10. Nurse position at Healdsburg High School  | .8 FTE  |
| 11. Health teaching position at Healdsburg High School  | .2 FTE  |
| 12. Special Education teaching position at Healdsburg High School                               | .4 FTE  |
| 13. Independent Study teaching position at Healdsburg High School                               | 1.0 FTE |
| 14. English/History Core (Multiple Subject) teaching positions at Healdsburg Junior High School | 2.4 FTE |
| 15. Math teaching position at Healdsburg Junior High School                                     | .8 FTE  |
| 16. Math/Science Core (Multiple Subject) teaching position at Healdsburg Junior High School     | .4 FTE  |
| 17. Elective teaching positions at Healdsburg Junior High School                                | 1.8 FTE |
| 18. Physical Education teaching position at Healdsburg Junior High School                       | .6 FTE  |
| 19. Special Education teaching position at Healdsburg Junior High School                        | .4 FTE  |
| 20. Home Study teacher position at Healdsburg Junior High School                                | .4 FTE  |
| 21. Reading teaching positions at elementary schools (categorically funded)                     | 2.0 FTE |
| 22. Reading First teaching positions at elementary schools (categorically funded)               | 2.0 FTE |



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|---|---------|
| 23. Resource Teacher teaching position at Healdsburg Elementary Schools (categorically funded)  | 2.0 FTE |
| 24. Elementary class teaching positions at Healdsburg Elementary Schools                        | 3.0 FTE |
| 25. Counselor positions District wide (categorically funded)                                    | 2.2 FTE |
| 26. Music teaching position District wide   | 1.0 FTE |
| 27. Teaching positions held by persons without authorization to teach English Language Learners | 4.0 FTE |
| 28. Continuation Principal at MBA and Vice Principal at Healdsburg High School                  | 1.0 FTE |
| 29. Vice Principal at Healdsburg Junior High School   | 1.0 FTE |
| 30. Principal at Healdsburg Elementary Schools  | 1.0 FTE |
| 31. Director of Curriculum and Instruction at Healdsburg District Office                        | 1.0 FTE |

9. The total reduction of FTE positions in the PKS resolution is 35.8.

10. The reductions called for by the PKS resolution are based upon the district's analysis of its enrollment and its budget.

11. At hearing, complainant dismissed the accusation against respondents Mike Berry and Tom Kirkpatrick, who were given layoff notices pursuant to item 27 of the PKS resolution. Complainant also dismissed the accusation against Aida Pacheco. As a result, Berry, Kirkpatrick, and Pacheco are no longer respondents in this matter.

12. Lois Gause is the district's human resources manager. Gause testified that the district intends to effect the reductions called for by item 14 of the PKS resolution – 2.4 FTE in English/History Core teaching at the district's junior high school – by the termination of a 1.0 FTE temporary employee, termination of a second employee whom the district was planning to non-reelect,<sup>1</sup> and a reduction in the 0.8 FTE position occupied by respondent Jeanne Van der Zee. Part of Van der Zee's 0.8 FTE position is devoted to English/History

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<sup>1</sup> Gause did not identify this employee by name. The employee has resigned.

Core, and the other part involves teaching students in the elective AVID program; the AVID portion of Van der Zee's position is being eliminated under item 17 (elective teaching positions). The evidence does not establish how Van der Zee split her time between English/History Core and AVID.

Van der Zee argues that the English/History Core portion of her position cannot be eliminated because the district has failed to take into account the attrition caused by the resignation of the second employee. The evidence, however, fails to support her argument. If anything, the evidence demonstrates that the district did take attrition into account: it appears that to achieve the 2.4 FTE reduction in English/History Core, the district planned to terminate two employees and eliminate a portion of respondent Van der Zee's 0.8 position. That one of those employees has chosen to resign does not affect the district's need to reduce a portion of Van der Zee's position.

13. Respondent Ann Rasella teaches English Language Development (ELD) and speech at the district's high school. Her position is being reduced by 0.4 FTE, 0.2 under item 2 of the PKS resolution (elective teaching) and 0.2 under item 5 (World Language). Respondent Rasella questions whether ELD is a mandated service. She offers no authority for the proposition that it is; she argues, however, that having raised the issue, the burden shifts to the district to prove that it is not a mandated service or that, if it is, the district will still meet mandated levels of service.

Respondent's argument is not accepted. Under Education Code section 44955, it is the district's burden to prove that its governing board has determined that particular kinds of service must be reduced or discontinued; that, because of the reduction or discontinuance, it is necessary to decrease the number of permanent or probationary employees of the district; and that, (with certain exceptions not applicable here) no employee with less seniority than respondent Rasella is being retained to perform services that respondent is certificated and competent to render. It is true that, in reducing a particular kind of service, a district may not reduce a mandated service below its statutorily required level. (*California Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 811, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689, 696.) But it is respondent's obligation to prove that such an impermissible reduction will occur; without evidence to support respondent's claim, it is presumed that the district has complied with the law. (Evid. Code, § 664.) No evidence was offered to establish that ELD is a mandated service or that, by reducing respondent's position by 0.2 FTE, the district will reduce ELD below a statutorily-required level.

14. Respondent Julie Stockly is a 1.0 FTE physical education teacher at Healdsburg Junior High School. A more senior physical education teacher at Healdsburg High School, whose services are being reduced by 0.2 FTE under item 9 of the PKS resolution, has the right to bump into Stockly's position. The district proposes to layoff Stockly completely, instead of by 0.2 FTE, and have more senior teachers from the high school pick up the remaining 0.8 FTE of her position.



Stockly asserts that she cannot be terminated from her 1.0 FTE position to accommodate the bumping right of a more senior teacher whose services are only being reduced by 0.2 FTE. Stockly is correct. Under Education Code section 44955, the district may terminate her services only "when it shall have become necessary by reason of" a reduction of a particular kind of service. Section 44955 does not prohibit partial bumping, and there is no evidence that partial bumping would be impractical in this case. On the contrary, it appears that partial bumping would be practical, as the district proposed to use high school teachers to cover all of Stockly's duties at the junior high school. The district may only reduce Stockly's position by 0.2 FTE. To eliminate her job completely would, in effect, eliminate more jobs than required by the PKS resolution.

15. Any other assertions put forth by respondents at the hearing and not addressed above are found to be without merit and are rejected.

16. 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 35.8 FTE exists in accordance with Education Code sections 44949 and 44955. Except as set forth below, cause further exists to give respondents notice that their services will be reduced or eliminated for the 2008-2009 school year. This cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.


2. In accordance with Finding 14, cause does not exist to give respondent Julie Stockly notice that her services will not be required for the 2008-2009 school year. Cause exists only to give Stockly notice that her services will be reduced from 1.0 FTE to 0.8 FTE.

#### ORDER

1. In accordance with Finding 14 and Legal Conclusion 2, the district may give notice to respondent Julie Stockly only that her services will be reduced by 0.2 FTE for the 2008-2009 school year.

2. Notice may be given to the remaining respondents that their services will be reduced or eliminated for the 2008-2009 school year.

DATED: April 29, 2008

  
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DAVID L. BENJAMIN  
Administrative Law Judge  
Office of Administrative Hearings