

BEFORE THE GOVERNING BOARD
SHANDON JOINT UNIFIED SCHOOL DISTRICT
COUNTY OF SAN LUIS OBISPO
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Alan Sciocchetti and Jill Smith,

Respondents.

OAH Case No. L2010031176

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 30, 2008, in San Luis Obispo, California.

Peter Carton, Attorney at Law, represented Rodney Wallace (Wallace), Superintendent of the Shandon Joint Unified School District (District).

John F. Sachs, Attorney at Law, represented Jill Smith (Respondent Smith).

Alan Sciocchetti (Respondent Sciocchetti) represented himself.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2010-2011 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2010-2011 school year.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Superintendent Wallace filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. On March 9, 2010, the Governing Board of the District (Governing Board) adopted Resolution number 2009-10-12, reducing one full-time-equivalent position in Kindergarten through Eighth Grade self-contained classroom education for the 2010-2011 school year.

4. Superintendent Wallace thereafter notified the Governing Board that he recommended that notice be provided to Respondents that their services will not be required for the 2010-2011 school year due to the reduction of particular kinds of services.

5. On March 10, 2010, the District provided notice to Respondents that their services will not be required for the 2010-2011 school year due to the reduction of particular kinds of services.

6. Respondents made timely requests for hearings to determine if there is cause for not reemploying them for the 2010-2011 school year.

7. On April 7, 2010, Superintendent Wallace issued the Accusation and served it on Respondents. Respondents thereafter filed timely Notices of Defense.

8. All prehearing jurisdictional requirements have been met.

9. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.¹

10. The Governing Board's decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

11. The reduction of services set forth in factual finding number 3 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

12. The District actually wishes to retain Respondent Sciocchetti, who is junior to Respondent Smith, to teach his current assignment, but gave notices to both pending the outcome of the hearing. Respondent Sciocchetti teaches at the Shandon Community Day School, the only school of its kind in the District. The school provides instruction to students in grades Seven through Twelve who require education services outside regular school because of behavior or academic reasons. The number of students receiving instruction at any given time ranges from five to nineteen. Instruction is provided in a self-contained classroom, in the core curriculum required for graduation, namely, Math, Science, English, Social Science, Physical Education, and Health.

13. Respondent Sciocchetti has a seniority date of August 15, 2005. He holds a clear multiple subject credential and a single subject (Social Science) credential. He has been teaching at the community day school for six years, including one year as a long-term substitute. He has a Master's Degree in Education. Since commencing his assignment,

¹ All further references are to the Education Code.

Respondent Sciocchetti has received training to meet the special needs of students in alternative education, such as the “Discipline with Dignity” workshop. Discipline with Dignity workshop. In addition to dealing with behavior issues, he has training and experience in providing instruction in the multiple subjects in the higher grades.

14. Respondent Smith has a seniority date of September 22, 2003, and holds a multiple subject credential. She has provided instruction at the elementary school level during her entire tenure. Like Respondent Sciocchetti, she has shown adaptability in dealing with multiple subjects, grades, and behavior issues, albeit with younger students. She has also attended training to deal with disciplinary issues, such as the “What’s With this Kid” and “Dealing with Difficult Behavior” workshops.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 8.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 9.

3. Cause exists to reduce the number of certificated employees of the District by one full-time-equivalent position due to the reduction of the services described in factual finding number 3, by reason of factual finding numbers 1 through 11.

4. Cause for the reduction of the services set forth in factual finding number 3 relates to the welfare of the District's schools and pupils within the meaning of section 44949, by reason of actual finding numbers 1 through 14, and legal conclusion numbers 1 through 3.

5. Districts are permitted to disregard seniority, or “skip” junior employees, in accordance with section 44955, subdivision (d): “Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons: (1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course of study or to provide those services, which others with more seniority do not possess. . . .”

In *Bledsoe v. Biggs Unified School District* (2009) 170 Cal.App.4th 127 (*Bledsoe*), a district was able to skip two junior employees because of the district’s demonstrated need for teachers with experience in instruction in a community day school. The junior teachers possessed special training and experience that enabled them to meet the district’s specialized

needs for alternative education. They had taken courses in many subjects that covered areas of instruction, had training in areas related to working with difficult students, and had actual experience in dealing with the community day school students.

In this case, the District has established, and Respondent Smith does not appear to contest, the District's specific need for a qualified community day teacher. As in *Bledsoe*, the District has a specific need for personnel to meet the special needs of community day school students. With respect to the personnel to meet those needs, both respondents have received training in dealing with the emotional and behavioral needs of District students. Both have demonstrated adaptability in meeting the needs of students with special needs. However, Respondent Sciocchetti has done so in the higher grades served by the community day school. He also has credentials and coursework that allow him to teach the broad spectrum of higher grade courses. But more importantly, Respondent Sciocchetti has extensive experience in providing services to the students served at the community day school. Accordingly, the District has established that Respondent Sciocchetti has the requisite special training and experience necessary to meet the needs of the students at the community day school.

The District properly skipped Respondent Sciocchetti for layoff.

6. Cause, therefore, exists to terminate the services of Respondent Smith, by reason of factual finding numbers 1 through 14, and legal conclusion numbers 1 through 5.

ORDER

1. The Accusation is sustained in part, and the District may notify Respondent Smith that her services will not be needed during the 2010-2011 school year due to the reduction of particular kinds of services.

2. The Accusation is dismissed with respect to Respondent Sciocchetti.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings