

**BEFORE THE
GOVERNING BOARD OF THE
ATASCADERO SCHOOL DISTRICT**

In the Matter of the Accusations Against:

OAH No. 2010030093

Katherine Aaron, Shauna Ames, Deborah Beck, Emilia Bruzzo, Paul Cappellano, Steve Collins, Julie Cross, Julie C. Davis, Kara Ferrell, Grace Franklin, Teresa Harback, Lynne Hendrickson, Yvonne High, Rebecca Morris, Jill-Anna Myers, Anne M. Olson, Laurie Peterson, Rebecca Trueman, and Dorothy Wagster,

Respondents.

PROPOSED DECISION

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 19 and 22, 2010, at Atascadero, California.

Patricia Andreen, Attorney at Law, represented the Atascadero Unified School District.

John Sachs, Attorney at Law, represented the Respondents except Respondent Deborah Beck, who appeared at hearing and represented herself.

Evidence was received and the matter was submitted for decision.

SUMMARY

The Governing Board (Board) of the Atascadero Unified School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2010-2011 school year for budgetary reasons. The decision was not related to the capabilities and dedication of the teachers whose services were proposed to be reduced or eliminated. District staff carried out the Board's decision by using a selection process involving review of seniority and credentials. The selection process complied with Education Code requirements.

FACTUAL FINDINGS

1. John Rogers, Superintendent of the District, filed the Accusations in his official capacity.
2. Respondents are certificated employees of the District.
3. On February 16, 2010, Kimberley Spinks, the Director of Human Services, on behalf of the Superintendent, recommended that the Board give notice that certain services performed by certificated employees, including Respondents, be reduced or eliminated, and that the services of Respondents would not be required for the ensuing school year.
4. On February 16, 2010, the Board adopted Resolution No. 10-09-10 whereby the Board resolved to discontinue or reduce the particular kinds of services. The Board further determined that based on the discontinuance or reduction of services, it would be necessary to decrease the number of certificated employees at the close of the present school year by a corresponding number of full-time equivalent (FTE) positions as follows:

Administrative Services - Principal	1.0 FTE
Elementary Multiple Subject Instruction	7.0 FTE
Elementary Music Instruction	
Elementary Choir/Band	1.9 FTE
Elementary Music Coordinator	.5 FTE
School Counselors – Counseling 9-12	2.0 FTE
Special Education	
Learning Center Teachers	3.0 FTE
Learning Center Support Teacher	1.0 FTE
Atascadero High School	
Learning Center Support Teachers	1.42 FTE
AVID Program	.58 FTE
Spanish Teacher	.29 FTE
Art Teacher	.29 FTE
Atascadero Junior High School	
English Teacher	.1.0 FTE
AVID Program	.33 FTE
Drama Teacher	.50 FTE
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TOTAL CERTIFICATED POSITIONS	20.46 FTE

5. Pursuant to Resolution 10-09-10, the Board directed the Superintendent to notify the employees affected by the Board's resolution and give notice to said employees that their services would not be required for the ensuing school year and state the reasons therefore.

6. The Board adopted Resolution 11-09-10 wherein the Board defined "competency" as follows: "[An] employee shall be deemed to be 'competent' to render services if he or she possesses the necessary credential, is No Child Left Behind (NCLB) compliant, and has taught the subject matter or performed the particular service, within the District, for one complete school year within the past 10 years." The Board further resolved that "certain certificated employees possess certain special skills and experience, because of their training and/or work for the District to provide unique services."

7. The Board adopted Resolution No. 12-09-10, setting forth a selection process involving review of credentials and other criteria for breaking ties between employees with the same first dates of paid service. The District did not apply the tie-breaking criteria in this case because it contended that all of the Respondents are subject to layoff. In any event, the Governing Board was not arbitrary or capricious in establishing the tie-breaking criteria. The process complied with Education Code requirements.

8. On or about March 23, 2010, Superintendent Rogers notified Respondents in writing that it had been recommended their services would not be required for the next school year. The mailing included the reasons for the notification, a copy of the Accusation and other jurisdictional documents as required by the Education Code.

9. The Assistant Superintendent made and filed Accusations against each Respondent on March 23, 2010. Notices of Defense and Requests for Hearing were timely filed by all of the employees who appeared for the hearing. All jurisdictional requirements were met.

10. The District considered attrition, including resignations, retirements and requests for leave, in determining the necessary layoff notices to be delivered to employees.

11. The District maintains a seniority list which contains employees' seniority dates, current assignments and locations, advanced degrees, credentials, and authorizations. The District then identified the most junior employees working in a particular kind of service being reduced or discontinued and determined which employees would receive layoff notices.

12. (a) The District has decided to "skip" and retain the services of teacher Nathaniel Conrad even though he less seniority than Respondents. The District decided to skip Mr. Conrad because of his experience and his ability to teach high school band. The District maintains that this position requires special talent and ability, such as a working knowledge of all instruments, stamina to work a substantial amount of after school hours, a commitment to work year-round, and the ability to create excitement on the part of students for the band program.

(b) Ms. Spinks, who was principal of the high school during the 2007-2008 school year, testified that Mr. Conrad has been able to exceed the huge expectations the District and community places on the high school band program. He is highly regarded by his peers, the District and the community for his knowledge, and the excitement he generates on the part of students. He has consistently proven his ability to motivate students, which is evidenced by their success in statewide competitions, and their performances in high school musicals, parades and sporting events.

(c) In addition to teaching, Mr. Conrad puts on events to generate funds for the program, insures that the musical instruments are properly tuned, schedules participation in events such as parades and competitions, and collaborates with the drama teacher and choral director to produce the spring musical. Mr. Conrad has been with the District for three years. Since that time there has been a yearly increase of student participation in band by 10 to 15 students. Ms. Spinks attributes this increase to the efforts of Mr. Conrad. Finally, Mr. Conrad has helped to raise funds for the band program by establishing relationships with booster clubs and other community groups.

(d) Respondent Rebecca Trueman teaches music at four elementary school sites. Although she has the credentials to teach high school band, the District proved that it properly exercised its discretion by “skipping” Mr. Conrad and retaining his services for the 2010-2011 school year.

13. (a) The District has decided to retain the services of Respondents Emilia Bruzzo, the high school choir teacher, and Respondent Laurie Peterson, the middle school choir teacher. The District decided to retain the services of Respondents Bruzzo and Peterson because of their unique professional experiences and training. The District maintains that the middle and high school choir positions require special talents, abilities, experience, and the ability to motivate students.

(b) Respondent Bruzzo has 25 years experience as a performer, composer, musical director, and conductor. She has been with the District for five years. For the past five years she has collaborated with the band and drama teachers to produce the high school spring musical. In fact, she has been the musical director for the musical for the past three years. She coordinates or directs five different choirs and developed a curriculum for musical theater. Besides directing the various choirs, she also teaches classes in Musical Theater and Introduction to Singing. Respondent Bruzzo also schedules choral performances in and outside of the District as a way to gain support in the community. She has organized several four-day festival trips involving as many as 80 students. She has managed and directed the Atascadero High School Choir Boosters to obtain financial support for the high school choir program. Finally, Respondent Bruzzo has been the musical director for various community theater productions at the San Luis Obispo Little Theater.

(c) Respondent Peterson has 20 years experience conducting and directing choirs of all ages. She is proficient in piano, music history and theory, sight singing, performance practice, and playing multiple voice parts. She has been with the District 11 years. When

she started with the District, the middle school choir program had 40 students. Since she has been the choir director, the choir has expanded to 150 students. Respondent Peterson motivates the choir students, teaches them the fundamentals of participating in a choral group, and prepares the choir for local and state competitions. She has particular expertise in working with adolescent boys who are experiencing voice changes. This is particularly important for a middle school choir director. She also established and teaches a keyboarding class. Her choral groups have consistently received superior ratings and awards when they perform at festivals and competitions.

(d) The District properly exercised its discretion in deciding to retain the services of Respondents Peterson and Bruzzo.

14. The District has decided to retain the services of teacher Yvonne High even though she has less seniority than Respondents. The District decided to “skip” Ms. High because of her experience and her ability to teach high school dance. The District maintains that this position requires special talent and ability. The District established that no other Respondent is qualified to teach dance. The District properly exercised its discretion in deciding to retain the services of Respondent Yvonne High.

15. Respondent Rebecca Morris is bilingual and bi-literate. Ms. Morris currently teaches Spanish and holds a .29 FTE position. She is one of two teachers at the high school with a BCLAD credential. Respondent Morris has over 20 years experience teaching English to Spanish speakers, and Spanish to both English and Spanish speakers. Respondent Grace Franklin has recently earned a BCLAD credential, which she received after March 15, 2010. Respondent Franklin teaches English Language Learners at an elementary school. Respondents Morris and Franklin are confident of their skills and passionate about teaching. Through their testimony, they established the importance of being able to communicate to Spanish speaking parents. Respondents Morris and Franklin both noted that the District needs bilingual teachers. Ms. Spinks testified that in the event Respondents Morris and Franklin are laid off, there will be three teachers holding BCLAD credentials in the District. As a result, the District’s need for teachers holding BCLAD credentials will be met for the 2010/2011 school year.

16. At the hearing, Respondents Shauna Ames, Paul Cappellano, Steve Collins, Julie Davis, Kara Ferrell, Teresa Harback, Jill-Anna Myers, and Deborah Beck did not assert “bumping rights.” That is, they did not assert that they are competent and credentialed to perform services in a position currently occupied by a certificated employee with less seniority.

17. Respondent Olson teaches music at certain elementary schools in the District. Her seniority date is August 27, 1999. She has never taught full-time and currently holds a .90 FTE position. She is requesting that she be deemed to teach in a self-contained elementary classroom. Respondent Olson has not taught a full year at the District within the last 10 years. Therefore, she does meet the competency criteria established by the District.

18. Respondent Rebecca Trueman teaches music full-time at certain elementary schools in the District. In addition to her music credential, Respondent Trueman holds a multiple subject credential. Her seniority date is August 27, 1996. She asserts that she can bump certain teachers who teach in a self-contained classroom. However, Respondent has always taught music for the District. She has not taught in a self contained classroom for at least one out of the last 10 years. Therefore, she does not meet the competency criteria established by the District.

19. Respondents contend that the projected increase in student enrollment set forth in the Second Interim Budget Report (Exhibit A) establishes that the District acted improperly in adopting Resolution 10-09-10. Respondents' contention is not persuasive. The District based Resolution 10-09-10 on its decision to reduce particular kinds of services; not on declining enrollment. In any event, the projected increase in enrollment is attributed to incoming special education students (approximately 59) from the San Luis Obispo County Office of Education.

20. Respondent Deborah Beck, who appeared in *propia persona*, is a counselor with the District. Her testimony established that she performs important and valued work for the District. However, she did not establish that she is competent and credentialed to perform services in a position currently occupied by a certificated employee with less seniority.

21. The reduction or discontinuation of the particular kinds of services set forth in Factual Finding 4, related to the welfare of the District and its pupils.

22. Respondents are not certificated and competent to render a service being performed by any employee with less seniority who is being retained.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents.

2. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services. The Board's decisions to reduce or eliminate the identified services were neither arbitrary nor capricious. The decisions relate solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949.

3. The District's decision to "skip" and retain the services of Nathaniel Conrad and Respondents Emilia Bruzzo, Laurie Peterson, and Yvonne High was neither arbitrary nor capricious and related to the welfare of the pupils and schools within the District. The evidence established that the experience, training and abilities of these teachers are extraordinary and are necessary to maintain the high standards that the District and the community have come to expect of the band, choir and dance programs.

4. Respondents contend that the competency criteria established by the District was vague and not legally permissible under Education Code section 44955. Respondents' contention is not persuasive. The Court of Appeal in *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 567, held that a District has the discretion to establish competency standards for certificated employees of the District. In *Duax*, the Governing Board established a standard of competency that required one year of full-time teaching of the subject matter within previous ten years. The Court found that such standard "clearly related to skills and qualifications to teach" and did not define competency too narrowly. In this case, the District properly exercised its discretion in establishing competency criteria and said criteria relate to the skills and qualifications of its certificated employees.

5. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

ORDER

1. The Accusations against Respondents Emilia Bruzzo, Laurie Peterson, and Yvonne High are dismissed. The Accusations against all other Respondent are sustained.

2. Notice may be given to Respondents Katherine Aaron, Shauna Ames, Deborah Beck, Paul Cappellano, Steve Collins, Julie Cross, Julie C. Davis, Kara Ferrell, Grace Franklin, Teresa Harback, Lynne Hendrickson, Rebecca Morris, Jill-Anna Myers, Anne M. Olson, Rebecca Trueman, and Dorothy Wagster, that their services will not be required for the 2010-2011 school year.

Dated: April 26, 2010

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings