

**BEFORE THE
GOVERNING BOARD OF THE
BAKERSFIELD CITY SCHOOL DISTRICT
KERN COUNTY, STATE OF CALIFORNIA**

In The Matter of the Non-reemployment
Of 49 Full Time Equivalent Certificated
Employees:

OAH No. L2004030538

PROPOSED DECISION

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 15, 16, and 19, 2004, in Bakersfield, California.

Bakersfield City School District was represented by Jones & Matson, Attorneys at Law, by Urrea C. Jones, Jr., and Marcos F. Hernandez.

Driscoll & Associates, Attorneys at Law, by Thomas J. Driscoll, Jr. represented the following respondents: Michelle Alvarado, Veronica Artiaga, Alex Ball, Melissa Banal, Juliana Barron, Angela Bluestone, Kathy Bryant, Gloria Burr, Wayne Burris, Elizabeth Carde-Leipnik, Salvador Casillas, Maria Castro-Morales, Terri Cline, Jocelyn Collins, Bree Davis, Kathryn DeLa Roz, Susana Del Toro, Elvia Duenas, Angela Estrada, Trent Fussel, Norma Garcia, Marianne Gartenlaub, Leah Giannini, Bryan Gridiron, Maria Hankins, Melissa Hansen, Kathryn Harper, Stacy Helms, Janice Herda, Ellen Holfeld, Roy Hooks, Linda Hufstedler, Kate James, Dana Johnson, Gino King, Scott Larsen, Nichol Lindsey, Sandra Lopez-Delgado, Angelica Lopez-Montelongo, Amanda Madkins, Dennis Marquez, Weston Martin, Kelly Maxwell, Jennifer McMahan, Jodi Moore, Christy Morasco, April Morphis, Arianne Newman, Ron Parker, Dayla Parra, Marianne Perttula, Wendy Powell, Fany Ramos, Raul T. Rangel, Elizabeth Ratliff, Bianca Rizo, Myrna Rojas, Oralia Santos, Jaime Simmons, Lynn Sonner, Lorna Tripp, Meikim Wah, April West, and Sara Williams.

Respondent Terisa McKinney appeared *in propria persona*.

Oral and documentary evidence was received and the record was left open to allow the parties to submit written closing argument and post hearing briefs. The District submitted "Proposed Findings of Fact" and "Bakersfield City School District's Post Hearing Brief" on April 27, 2004. Said documents were marked collectively as exhibit 42. Mr. Driscoll, on behalf of his clients, submitted "Respondents' Post Hearing Brief, Closing Arguments and Proposed Factual and Legal Findings" on April 28, 2004. Said document was marked as exhibit 120. Respondent McKinney did not submit written closing argument or a post hearing brief.

FACTUAL FINDINGS

1. Dennis Patrick filed the Accusation in his official capacity as Assistant Superintendent of Personnel the Bakersfield City School District ("District").

2. Respondent are certified probationary employees of the District.

3. On March 10, 2004, the Governing Board of the District adopted Resolution No. VII to reduce or discontinue the following particular kinds of services no later than the beginning of the 2004-2005 school year, pursuant to Education Code Section 44955:

| <u>Particular Kind of Service</u> | <u>Full-Time Equivalent</u> |
|--|-----------------------------|
| Physical Education Teachers (Jr. High/Middle Schools) | 10.0 |
| Increase Class Size in Grades 4-6 to 33.5; Grades 7-8 to 31 | 20.0 |
| Supervisor (Student Services) | 1.0 |
| Program Specialists (school site/central office) | 19.0 |

4. As a result of the reduction or discontinuance of services, the Governing Board determined that 50 full time equivalent positions could be reduced as set forth above.

5. The reduction or discontinuance of the position ("Supervisor – Student Services" does not require the termination of any Respondent herein because the District decided to transfer the person holding said position to another supervisory or administrative position

6. Board Resolution No. VII also provided that the services of certificated employees who possessed qualifications needed for the following programs would be retained regardless of seniority:

Teachers who possess credentials in the
subject areas of Industrial Technology,
Instrumental Music, Math, Science, or
Special Education

School Nurse

Speech Therapists

BCLAD Certified Teachers

Federal Class Size Reduction Program Teachers

7. The district is only required to offer 200 minutes of physical education each 10 days. Education Code section 51223. The District does not intend to reduce physical education below statutorily mandated minimum required level by law.

8. On March 10, 2004, the Board adopted Resolution No. VIII, Criteria for Determining Order of Seniority for Those Employees with the Same Date of First Paid Service. The criteria adopted were:

A. Experience¹ to teach or serve in a particular program or provide a particular service of need by the District. (family life, music, counselor, guidance spec., Miller-Unruh, etc.)

B. Experience² to teach in special categorical programs. (bilingual, special education, speech therapist, school nurse, etc.)

C. Experience³ previous to current employment as a full-time, credentialed teacher in a probationary/permanent, K-12 teaching position in a public school.

D. Number of supplementary authorizations⁴

E. Number of teaching and/or special service credentials⁵

¹ One point per year, including current.

² One point per year, including current.

³ One point per year.

⁴ One point per supplementary authorization, Gen Elementary/Secondary credential, CLAD/BCLAD cert.

⁵ One point per credential.

F. Earned degrees beyond BA/BS level ⁶

G. Multiple language skills relevant to district need⁷

H. Credit for Emergency, Preliminary or Clear/Life
Credentials⁸

9. On March 12, 2004, Dennis Patrick, Assistant Superintendent, Personnel Services, served 101 certificated employees, including Respondents, with notice of recommendation that their services would not be required for the 2004-2005 school year due to a reduction or elimination of particular kinds of services under the provisions of Education Code Sections 44955 and 44949. On that same day, Mr. Patrick sent notice to the Superintendent, the Members of the Governing Board, and the President of the Bakersfield Elementary Teachers Association identifying the certificated employees who had been served with the notice of recommendation.

10. Respondents, timely requested, in writing, a hearing to determine if there was cause for not reemploying them for the 2004-2005 school year. Thirty-six certificated employees who were served with the notice of recommendation did not request a hearing.

11. Following Respondents' request for hearing, the District timely served an accusation, notice of hearing, and notice of defense form on each of the Respondents, who thereafter timely filed notices of defense.

12. The District Served a Notice of Hearing on each Respondent. All pre-hearing jurisdictional requirements have been met.

TEACHERS CLASSIFIED BY THE DISTRICT AS TEMPORARY

13. At the same time that Mr. Patrick served Respondents with notice of recommendation that their services would not be required for the 2004-2005 school year due to a reduction or elimination of particular kinds of services, he also served 53 certificated employees classified by the District as temporary with notices that they were not being reemployed for the 2004-2005 school year. These 53 employees included teachers who were employed under emergency permits, pre-intern certificates, or internship credentials internships.

14. The 53 teachers served release notices by Mr. Patrick were classified as temporary solely on the basis of the types of credentials they hold, including emergency permits, pre-intern certificates, or internship credentials.

⁶ One point per degree.

⁷ One point for Spanish, if credential or in progress (all hirees for bilingual from 1994-1885 in progress)

⁸ One point per emergency (other than 30-day sub), two points per preliminary, three points per clear.

15. Respondents contend that the notices to the 53 "temporary employees" were not authorized by the Governing Board under Education Code Section 44954(b) and are therefore null and void. Respondents' contention is not persuasive. Evidence Code Section 664 states in pertinent part: "It is presumed that an official duty has been regularly performed." Mr. Patrick in his official capacity as Assistant Superintendent was charged by the Governing Board to perform administrative duties on behalf of the Board, including the duty to give notices of non-reemployment. It is presumed that he performed this duty on behalf of the Governing Board. Further, no evidence was presented proving that the Governing Board took any action to invalidate Mr. Patrick's actions in sending out the notices.

16. The 53 teachers served release notices by Mr. Patrick were classified as temporary solely on the basis of their credentialing, holding emergency permits, pre-intern certificates, or internship credentials.

17. There was no evidence as to the seniority of the 53 teachers classified as temporary. With the exception of Kelly Watson and Mark Harrington, none of these teachers were shown in the District's seniority list, and no data exists in the record with which to rank these employees. There is no way to determine the seniority of the other 51 teachers classified as temporary.

18. Respondent contends that 53 teachers classified as temporary should have been classified as probationary and the District was therefore required to give them layoff notice and a right to a hearing under Education Code sections 44949 and 44955. Respondents' also contend that since these teachers were terminated because of economic reasons, they should have mandatory rehire rights. Although respondents raise compelling arguments on behalf of these employees, the undersigned has no jurisdiction to decide issues relating to these teachers since they were not given layoff notices, were not the subject of accusations in this matter, did not appear as parties, and were not represented at the hearing. As a result, the undersigned is precluded from making factual finding and legal conclusions regarding the effect of the seniority dates of these employees in relation to respondents.

19. The District did not identify the certificated employees providing the particular kinds of services authorized for reduction by the Board. The District did not make any bumping or displacement analysis regarding the personnel serving in the particular kinds of services authorized for reduction by the Board. There was no evidence that any of the reductions authorized by the Board resulted in the displacement of any Respondent or junior employee.

20. The evidence established that the elimination of the Supervisor (Student Services) 1.0 FTE position would result in the occupant of that position being assigned as a school principal, rather than being returned to the classroom. This results in a reduction of the 50.0 FTE layoff authorized by the Board to 49.0 FTE.

21. None of the 10.0 FTE reductions in PE requires the displacement of any teacher. The evidence was uncontradicted that the reduction in PE would be accomplished by the reduction in minutes of PE instruction, which would necessitate the addition of an equal number of minutes of academic instruction. The 10 FTE of PE would be absorbed entirely by 10.0 former PE teachers teaching additional courses added at their school sites, in which each was credentialed and competent to teach.

22. District did not identify any of the employees performing 19.0 FTE Program Specialist services authorized for reduction by the Board. District did not provide any bumping or displacement analysis regarding the Program Specialist reductions. There was no evidence that any of the occupants of Program Specialist positions were credentialed or qualified to take the position of any less senior certificated employee, including Respondents.

23. District did not identify any of the employees occupying any of the 20.0 FTE positions being eliminated as a result of the increase in class sizes in grades fourth through eighth. District did not provide any bumping or displacement analysis regarding the class size increases. There was no evidence that any of the occupants of these fourth through eighth grade positions were credentialed or qualified to take the position of any less senior certificated employee, including Respondents.

24. All seventh and eighth grade classes in the District are departmentalized, with the exception of perhaps one class, according to Mr. Patrick. There was no evidence regarding which departmentalized seventh and eighth grade classes were being reduced or discontinued as a result of class size increases in those grades. The uncontradicted testimony was that the seventh and eighth grade departmentalized reductions accounted for 6.5488 FTE positions.

25. The testimony established positively assured attrition regarding 18 positions: the retirement of the most senior PE teacher, the non-reelection of seven teachers, the release by the Board of three temporary teachers, and the Board's termination of seven teachers.

26. Marie Ono and Marianne Perttula hold credentials with authorizations in Music.

27. Laura Rahe, Filomeno Perez, and Leah Giannini hold credentials with authorizations in Math.

28. Kathryn DeLaRoz, Sandra Lopez-Delgado, Angela Bluestone, Dana Clow, and Linda Hufstедler, hold special education credentials.

29. Kelly Maxwell holds a credential qualifying her as a Speech Therapist.

30. Maria Damas, Rachel Soto, Rosemary Duran, Virginia Gonzalez, Imelda Loera, Norma Garcia, and Angelica Lopez-Montelongo hold BCLAD certificates.

31. Wayne Burris, Irasema Fonseca, Nicole Harthorn, Susana Del Toro, Dana Johnson, Gino King, Nichol Lindsey, Terri Cline, Bianca Rizo, Salvador Casillas, Kate James, Gloria Burr, April West, Britta Regan, Shannon McRoy, Lynn Sonner, Melissa Hansen, Timothy Hook, Elizabeth Ratliff, Jennifer McMahan, Jaime Simmons, Trent Fussel, Myrna Rojas, Angela Estrada, Alex Ball, Dayla Parra, Christy Morasco, Scott Larsen, and Fany Ramos, all possess the qualifications necessary for the Federal Class Size Reduction Program in that they are all NCLB "highly qualified" teachers. Madge Magner is not a "highly qualified" teacher.

32. Numerous Respondents have been continuously employed by the District in positions requiring certification qualifications for months, even years, prior to the "Start Date" shown on the "Layoff Seniority List" and the seniority date shown on the "BETA Seniority Listing." The District stipulated that these Respondents were classified as temporary during this prior employment period solely on the basis of holding emergency permits and district credentials. The first dates of paid service of these Respondents are as follows:

| | |
|----------------------|--------------------|
| Angela Bluestone | February 5, 1996 |
| Gino King | August 20, 1996 |
| Wayne Burris | August 20, 1996 |
| Susana DelToro | October 28, 1996 |
| Kathy Bryant | July 11, 1997 |
| Terri Cline | August 19, 1997 |
| Linda Hufstedler | August 19, 1997 |
| Juliana Barron | August 25, 1998 |
| Oralia Santos | August 25, 1998 |
| Roy Hooks | August 25, 1998 |
| Bianca Rizo | August 25, 1998 |
| Ron Parker | September 28, 1998 |
| Nichol Lindsey | October 30, 1998 |
| Kathryn DelaRoz | January 4, 1999 |
| Sandra Lopez-Delgado | April 19, 1999 |
| Salvador Casillas | August 20, 1999 |
| Maria Castro-Morales | August 20, 1999 |
| Jocelyn Collins | August 20, 1999 |

| | |
|--------------------|------------------|
| Marianne Garenlaub | August 18, 2000 |
| Dennis Marquez | January 2, 2001 |
| Amanda Madkins | October 29, 2001 |
| Leah Giannini | August 15, 2002 |
| Melissa Hansen | August 15, 2002 |

33. The law is clear that seniority is based on the first date of paid service in a probationary position (Education Code section 44845). Although the court in CTA v. Golden Valley Unified School District (2002) 98 Cal.App.4th 369, did not address the issue of whether emergency permit holders are credited with seniority rights in layoff proceedings, it held that under Education Code Section 44915, emergency permit holders are entitled to be classified as probationary employees when hired to fill positions requiring certification qualifications. Further, said employees are entitled to the benefits of probationary status with the exception their service under an emergency permit cannot be counted toward attaining permanent status (Golden Valley, supra at p. 380; Education Code Section 44911). The benefits that accrue to emergency permit holders include mid year dismissal rights and rights under Education Code section 44949 and 44955. According to relevant statutes and case law, the above respondents should be considered probationary at the time they started work under their emergency credentials. Further, since these respondents have been properly noticed in this layoff proceeding, they are within the jurisdiction of the ALJ.

34. The District stipulated that all certificated employees with seniority dates before August 15, 2003, were retained by the District and none were noticed for lay-off in this proceeding. The employees named in finding 31 above, with the exception of Kathryn Harper, Arianne Newman, and Ellen Holfeld, are senior to retained certificated employees with seniority dates of November 28, 2002, through August 15, 2003, and thereafter. The teachers identified in finding 29 above are credentialed to serve in the same areas as the retained employees junior to them.

35. The District staff employed the criteria set forth in Board Resolution No. VIII to assign points to the Respondents and other certificated employees having the same date of paid service as the Respondents. The District staff awarded points based on information in the District's records. As between employees with the same date of paid service and the same number of points, a lottery was employed to break the tie. This information was used to create the District's original "Layoff Seniority List" which was attached to the Accusation and listed by order of seniority the 101 employees originally served with the notice of recommendation.

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36. The District modified its Layoff Seniority List several times during the course of the hearing, ultimately offering Exhibit 26b, which reflected the following changes in the application of the tie-breaking criteria adopted by the Board as Resolution No. VIII:

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|---------------------------|--|
| Black, Tracy | Criteria B, change 1 to 0 (total points decreased from 5 to 4) |
| Carde-Leipnick, Elizabeth | Criteria D, change 3 to 2 (total points decreased from 7 to 6) |
| Casillas, Salvador | Criteria B, change 0 to 7 (total points increased from 5 to 12) |
| Casner, Steven | Criteria B, change 2 to 4 (total points increased from 8 to 10) |
| Castro-Morales, Maria | Criteria B, change 5 to 6 (total points increased from 9 to 10) |
| Duenas, Elvia | Criteria B, change 3 to 4 (total points increased from 8 to 9) |
| Fonseca, Iresma | Criteria E, change 2 to 1 (total points decreased from 23 to 22) |
| Haggard, Misty | Criteria G, change 1 to 0 (total points decreased from 9 to 8) |
| Lopez-Montelongo, Angela | Criteria C, change 4 to 0 Criteria B, change 1 to 5 (total points remain at 11) |
| Maxwell, Kelly | Criteria D, change 1 to 0 (total points reduced from 13 to 12) |
| Ono, Marie | Criteria A&B, change to 0 (total points decreased from 11 to 5) |
| Perttula, Marianne | Criteria D, change 1 to 3 (total points increased from 5 to 7) |
| Rabe, Laura | Criteria D, change 3 to 4 (total points increased from 6 to 7) |
| Santos, Oralia | Criteria B, change 2 to 6 (total points increased from 7 to 11) |
| Tucker, Linda | Criteria F, change 0 to 1 (total points increased from 10 to 11) |
| Walker, Kenneth | Criteria F, change 1 to 0 (total points reduced from 10 to 9) |
| West, April | Criteria D, change 1 to 2 (total points increased from 4 to 5) |

37. Among the changes made to the Layoff Seniority List was the addition of points for Oralía Santos on the basis of her service with the District as an Immersion Teacher. Numerous other Respondents were entitled to an additional point on the basis of having served as Immersion Teachers during the 2003-2004 school year, but were not properly credited for this service. The Respondents entitled to one additional tie-breaking point on this basis are: Meikim Wah, Amanda Madkins, Gloria Burr, April West, Wendy Powell, Melissa Hansen, Myrna Rojas, Angela Estrada, Norma Garcia, Veronica Artiaga, Michelle Alvarado, and Fany Ramos.

38. Jodi Moore is also entitled to an additional 3 tie-breaking points based on her three years' service as a full-time, credentialed teacher in a probationary K-12 position in the Liberty Public Schools District, Missouri. Contrary to the District's assertion, there is no requirement in the District's resolution that teachers be "fully" credentialed during this service outside of the District, merely that they be credentialed. District's assertion is contradicted by its admitted policy of allowing credit on the salary schedule for such service. District was aware of Ms. Moore's Missouri teaching experience as of January 2003 when it awarded her three years' salary schedule credit for such service. The additional 3 points awarded Ms. Moore, whose seniority date is August 15, 2003; bring her to a total of 6 points.

39. District stipulated that employees with a seniority date of August 15, 2003, who scored six or more points on the tie-breaking criteria were excluded from layoff, and that those scoring five points as of the date points were awarded were subjected to a lottery to determine whether they were to be included in this proceeding. Respondents with a seniority date of August 15, 2003, for whom additional points were demonstrated in this proceeding such that their total points became five or more, were deprived of participation in the lottery for their point totals.

40. Respondent Linda Hufstedler was an out-of-state teacher, credentialed in Alabama, when first employed by the District for the 1997-1998 school year. She worked for the District pursuant to an emergency permit based upon her Alabama credential, obtaining a California preliminary multiple subjects credential in May 1998. Ms. Hufstedler has worked full-time continuously for the District since August 19, 1997.

41. Jocelyn Collins was first employed by the District under a probationary contract with a first date of paid service of August 20, 1999. In May 2000, District advised Ms. Collins that she was retroactively reclassified as temporary for the 1999-2000 school year.

42. Raul Rangel is a second year probationary employee with a seniority date of August 15, 2002, holding a Preliminary Single Subject Teaching Credential in Physical Education. Jorge Apperti, who teaches physical education at the same school as Mr. Rangel (Washington Middle), is a probationary employee junior to Mr.

Rangel. Mr. Apperti has not been noticed for lay-off. Mr. Apperti cannot be retained to teach physical education at Washington Middle School. The notices of involuntary reassignment, required under the teachers' collective bargaining agreement, were given to the physical education teachers as a result of Resolution No. VII because no physical education teachers' school site would change. The physical education teachers would simply be moved to other subject assignments to fill the additional academic minutes created by the loss of physical education minutes. According to the District's seniority listing, the only physical education teachers at Washington Middle School are Raul Rangel, Jorge Apperti, and Jonathan Freeling. Mr. Freehling is not credentialed in physical education, but has been teaching under a Board resolution expiring at the end of this school year. As of March 15, 2004, Mr. Freeling did not have a credential to teach physical education during the 2004-2005 school year. The only teacher available to provide the minimum statutory physical education minutes at Washington Middle School is Raul Rangel.

LEGAL CONCLUSIONS

1. The thirty-six certificated employees served with a notice of recommendation who not request a hearing (Jennifer Aborqui, Tracey Black, Candace Brazier, Alicia Calkins, Dana Clow, Jennifer Crafton, Maria Damas, Alicia Dhain, Laurie Dotson, Rosemary Duran, Irasema Fonseca, Virginia Gonzalez, Misty Haggard, Nicole Harthorn, Timothy Hook, Kathryn Irwin, Imelda Loera, Clarissa Lynch, Madge Magner, Nichole Mailer, Shannon McRoy, Mary Morton, Aimee Nielsen, Marie Ono, Filomeno Perez, Joan Pfeffer, Laura Rahe, Britta Regan, Tracie Sanders, April Smith, Rachel Soto, Linda Thompson, Annette Thompson, Linda Tucker, Errol Van Stralen, and Andrea Young) have waived their right to a hearing under Education Code Section 44949(b).

2. The Administrative Law Judge has no jurisdiction over the 53 teachers served temporary release notices by the Assistant Superintendent.

3. The certificated employees set forth in finding 32 were given incorrect seniority dates because they were not given credit for their probationary status while working under emergency permits or district internships. They are entitled to the seniority dates as set forth in finding 32. Education Code provisions regarding classification (Sections 44852, 44917, 44918, 44919, 44920, 44921, or 44986) contain no authorization for classifying a teacher on the basis of credentialing, but rather on the basis of replacing a probationary or permanent teacher on leave, or of teaching a temporary class. Temporary classification has been narrowly construed by the Legislature and must be strictly construed. *CTA v. Governing Board of the Golden Valley Unified School District* (2002) 98 Cal.App.4th 36 held that emergency permit holders are properly classified as probationary employees. Therefore these teachers are given seniority dates consistent with their first date of paid service as required under Education Code section 44845.

4. Pursuant to Factual Finding 33, regarding the District's election to save all employees with seniority dates prior to August 15, 2003, the teachers identified in finding 32 through and including Melissa Hansen are retained. The District has retained in employ numerous teachers junior to the teachers through and including Ms. Hansen. These junior teachers are credentialed to serve in the same areas as the more senior Respondents who therefore must be retained under Education Code Section 44955.

5. The District failed to prove that any of the program specialists or fourth through eighth grade positions cut by Resolution No. VII requires the displacement of any less senior employees. Section 44955 permits a layoff occasioned by a reduction of particular kinds of services, but only if such cuts necessitate a layoff, and only after the Board has made assignments and reassignments in such a manner that an employee is retained for any service his credentials entitle him to render. The District offered no evidence of bumping or displacement from which these determinations may have been made regarding the program specialists or the fourth through eighth grade positions. Therefore, cause does not exist to reduce program specialists and fourth through eighth grade positions, as requested in the Accusation

6. The personnel reductions for seventh and eighth grade in Resolution No. VII and in the Accusation were not specific as to which departmentalized classes were affected. *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627 requires the designation of particular departments or subjects when reducing services in departmentalized settings. The District specification in the enabling resolution and in the Accusation of fourth through eighth grade positions is insufficient as a matter of law as to any reduction in seventh and eighth grade positions. Therefore, cause does not exist to reduce the 6.54 positions in seventh and eighth grade.

7. Positively assured attrition reduces the necessity for the layoff as to 18 FTE: the retirement of the most senior PE teacher, the non-re-election of seven teachers, the release by the Board of three temporary teachers, and the Board's termination of seven teachers. The absorption of all 10 FTE in PE by additional classes further reduces the necessity for layoff by 10 FTE. The dismissal of the Accusation regarding the program specialists and the fourth through eighth grade positions further reduces the necessity for layoff by 39. The aggregate total of these reductions (67) exceeds the totality of the authorized layoff.

8. Cause exists, under Resolution No. VII, to retain certificated employees who possess credentials in the subject area of Instrumental Music. Under 5 CCR 80005, the area of Instrumental Music is taught by the holder of a credential with an authorization in Music. Marie Ono and Marianne Perttula hold credentials with authorizations in Music and therefore must be retained regardless of seniority.

9. Cause exists, under Resolution No. VII, to retain certificated employees who possess credentials in the subject area of Math. Laura Rahe, Filomeno Perez, and Leah Giannini hold credentials with authorizations in Math and therefore must be retained regardless of seniority.

10. Cause exists, under Resolution No. VII, to retain certificated employees who possess credentials in the subject area of Special Education. Kathryn DeLaRoz, Sandra Lopez-Delgado, Angela Bluestone, Dana Clow, and Linda Hufstedler, hold special education credentials and therefore must be retained regardless of seniority.

11. Cause exists, under Resolution No. VII, to retain certificated employees who possess Speech Therapist credentials. Kelly Maxwell holds a credential qualifying her as a Speech Therapist and therefore must be retained regardless of seniority.

12. Cause exists, under Resolution No. VII, to retain certificated employees who possess BCLAD certificates. Maria Damas, Rachel Soto, Rosemary Duran, Virginia Gonzalez, Imelda Loera, Norma Garcia, and Angelica Lopez-Montelongo hold BCLAD certificates and therefore must be retained regardless of seniority.

13. Cause exists, under Resolution No. VII, to retain certificated employees who possess the qualifications necessary for service in the Federal Class Size Reduction Program. The Federal Class Size Reduction Program has been eliminated, but its funding was placed within the No Child Left Behind Act (NCLB), Title II, Part A. NCLB, Title II, Part A permits teachers meeting the criteria for designation as a highly qualified teacher to be hired or retained with its funds for class size reduction, among other purposes. Wayne Burris, Irasema Fonseca, Nicole Harthorn, Susana Del Toro, Dana Johnson, Gino King, Nichol Lindsey, Terri Cline, Bianca Rizo, Salvador Casillas, Kate James, Gloria Burr, April West, Britta Regan, Shannon McRoy, Lynn Sonner, Melissa Hansen, Timothy Hook, Elizabeth Ratliff, Jennifer McMahan, Jaime Simmons, Trent Fussel, Myrna Rojas, Angela Estrada, Alex Ball, Dayla Parra, Christy Morasco, Scott Larsen, and Fany Ramos, all possess the qualifications necessary for the Federal Class Size Reduction Program in that they are all NCLB "highly qualified" teachers; therefore they must be retained regardless of seniority. Madge Magner is not a "highly qualified" teacher and therefore does not have the qualifications necessary for the NCLB Title II, Part A, Federal Class Size Reduction Program, so she may not be retained when more senior employees who, in fact, are credentialed and competent to serve in her position are terminated.

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14. Jocelyn Collins was wrongfully deprived of prior probationary service. Her first date of paid service was August 20, 1999, under a probationary contract. Under *Kavanaugh's* enforcement of the plain language of Education Code Section 44916, the District's attempted revision of this status to temporary in May 2000 was invalid. Ms. Collins seniority date under Education Code Section 44845 is August 20, 1999.

15. The classification of Respondent Linda Hufstedler also must be corrected from probationary to permanent. Respondent Hufstedler was an out-of-state teacher, credentialed in Alabama, first employed by the District for the 1997-1998 school year. She worked for the District pursuant to an emergency permit, obtaining a California preliminary multiple subjects credential in May 1998. While the District classified Ms. Hufstedler as temporary and she signed a temporary contract, District stipulated that the sole basis for that temporary classification was her emergency permit. Ms. Hufstedler was properly classified as probationary under the default classification provisions of Section 44915, rights under which her conduct could not waive. (Education Code Section 44924.) Therefore, cause exists to grant permanent status, and to grant seniority rights to Ms. Hufstedler as of August 19, 1997.

16. Among the changes made to the Layoff Seniority List was the addition of points for Oralía Santos on the basis of her service the District as an Immersion teacher. Numerous other Respondents were entitled to an additional point on the basis of having served as an Immersion teacher during the 2003-2004 school year, as noted in the District's Seniority Listing, Exhibit 18, but were not properly credited for this service. The Respondents entitled to one additional tie-breaking point on this basis are: Meikim Wah, Amanda Madkins, Gloria Burr, April West, Wendy Powell, Melissa Hansen, Myrna Rojas, Angela Estrada, Norma Garcia, Veronica Artiaga, Michelle Alvarado, and Fany Ramos.

17. Cause exists to grant Jodi Moore an additional 6 tie-breaking points based on finding 38. The District's admitted policy of allowing credit on the salary schedule for such service, and advancing Ms. Moore three steps on the salary schedule for such service support this conclusion. Since District stipulated that every teacher with six points and a seniority date of August 15, 2003, was excluded from these proceedings, Ms. Moore must be retained.

18. Cause exists to retain Raul Rangel based in finding 42. Since the District does not intend any net loss of teachers as a result of the decrease in physical education minutes, and since Mr. Rangel will be needed at Washington Middle School to meet the statutory physical education minimums at that site, he may not be laid-off in this proceeding.

19. Cause exists to dismiss the Accusation based on legal conclusions 1 through 18. Further, based on the totality of the evidence in this case, it would be impossible to set forth an accurate seniority list.

The Accusation is dismissed.

DATED: May 6, 2004.

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings