

**BEFORE THE GOVERNING BOARD OF THE  
HUGHES-ELIZABETH LAKES UNION SCHOOL DISTRICT  
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA**

**In the Matter of the Accusation Against:**

**JENNIFER BERBERICH  
JEANETTE CANGRO  
RHONDA GONZALES,**

**Respondents.**

**OAH No. L2005030613**

**PROPOSED DECISION**

This matter came on regularly for hearing on April 15, 2005 in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Peter C. Carton, Attorney at Law, represented the Hughes-Elizabeth Lakes Union School District.

Richard J. Schwab, Attorney at Law, represented Respondents, Jennifer Berberich, Jeanette Cangro, and Rhonda Gonzales.

The matter was submitted on April 22, 2005<sup>1</sup>.

**FACTUAL FINDINGS**

1. Penny Mertens (Superintendent Mertens) made and filed the Accusation in her official capacity as Superintendent of the Hughes-Elizabeth Lakes Union School District (District).

2. Respondents, Jennifer Berberich, Jeanette Cangro and Rhonda Gonzales, are probationary or permanent certificated District employees.

///

///

---

<sup>1</sup> See Footnote 2.

3. On or before March 15, 2005, the District personally served on each respondent a written notice that it had been recommended that notice be given to each respondent, pursuant to Education Code sections 44949 and 44955, that her services would not be required for the next school year (Notice of Recommendation Not to Reemploy). Each written notice set forth a reason for the recommendation and noted that the Board had passed a Resolution reducing the certificated staff.

4. On or about March 15, 2005, Pamela McHale, a Special Education teacher on whom the District had also served a timely Notice of Recommendation Not to Reemploy, filed a Waiver to Right to Request a Hearing.

5. Certificated employees timely submitted written requests for a hearing to determine if there is cause for not reemploying them for the ensuing school year.

6. The Superintendent made and filed Accusations against each of the certificated employees who requested a hearing. The Accusations, with required accompanying documents and blank Notices of Defense, were timely served on those certificated employees.

7. On March 30, 2005, a Notice of Defense, pursuant to Government Code section 11506, was timely filed on behalf of all three respondents<sup>2</sup>. Respondents Jennifer Berberich and Jeanette Cangro also timely filed individual Notices of Defense.

8. All prehearing jurisdictional requirements were met.

9. On March 14, 2005, the Board took action to reduce or discontinue the following particular kinds of services for the 2005-2006 school year:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
One self-contained classroom	1
Special Education services	1

10. No certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render.

///

///

---

<sup>2</sup> Although it was timely filed, that Notice of Defense did not reach the Administrative Law Judge until several days after the hearing was concluded, and it was not part of the evidence offered at the hearing. The Notice of Defense was admitted in evidence on April 22, 2005, pursuant to counsels' oral stipulation.

11. During the hearing, Superintendent Penelope Mertens testified that the elimination of two full time equivalent (FTE) positions was necessitated by the heavy rains which fell in southern California in January 2005. Those rains flooded and washed out portions of a main road used by many students to get to and from school. As a result, students were unable to get to school, and they either transferred to other school districts or they and their families moved from the area. The District lost 24-25 students in a six-week period, including 18 students in four weeks. Superintendent Mertens further testified that, in light of the circumstances, the District's reduction in force was based on a decline in average daily attendance (ADA).

12. Respondents do not argue that they received improper notice of the reason for their dismissals. (The notices indicated that the dismissals were based on a reduction in particular kinds of services (PKS) rather than ADA.) Nor do Respondents argue that the District failed to establish that the number of certificated employees the District seeks to terminate equals a "corresponding percentage of the certificated employees of the district" as mandated by Education Code section 44955, subdivision (b). Respondent do, however, argue that their terminations are unnecessary because of the positively assured attrition of one full-time intern, who teaches seventh and eighth grade social science, and who was not invited back for the next school year.

13. Although a district is not required to consider positively assured attrition in a PKS hearing (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627), courts have traditionally held that a district must consider all positively assured attrition when terminating certificated employees because of a decline in average daily attendance. (*Santa Clara Federation of Teachers v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831 [172 Cal.Rptr. 312]; *Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648 [167 Cal.Rptr. 363]; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689 [136 Cal.Rptr. 801]; *Lewin v. Board of Trustees* (1976) 62 Cal.App.3d 977 [133 Cal.Rptr. 385]; *Burgess v. Board of Education* (1974) 41 Cal.App.3d 571 [116 Cal.Rptr. 183].) However, Respondents bore the burden of establishing that their seniority and qualifications entitle them to teach social science at the seventh and eighth grade levels so that they might replace the full-time intern who is not returning for the upcoming school year<sup>3</sup>. (Evid. Code §500.) They failed to sustain that burden.

///

---

<sup>3</sup> Even if one or more of the respondents had sustained that burden, she/they would have been subject to testing before being permitted to teach seventh and eighth grad social science. Pursuant to Education Code section 44955, subdivision (c), if a retained employee's seniority and qualifications entitle him/her to teach a subject "he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject."

14. Pamela McHale is an intern teaching special education for the District. As stated above, she is not contesting her layoff. Her dismissal shall constitute the elimination of one FTE in special education.

15. The remaining three respondents, Jennifer Berberich, Jeanette Cangro, and Rhonda Gonzales, all share the same first date of paid service with the District, August 30, 2004. They do not dispute their seniority dates. Therefore, the order of dismissals for the remaining FTE position must be determined via the use of tie-breaker criteria established by the Board.

16. Board Resolution No. 9-04-05, adopted on March 14, 2005, established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination shall be based on the needs of the District and its students in accordance with the following, which it deemed "not necessarily listed in order of importance:"

- Credentialing
- Experience
- Extracurricular Activities
- Training
- Special Education Needs
- Competence
- Evaluations

17. Respondent, Jennifer Berberich, hold a preliminary multiple subject credential with a supplementary authorization in mathematics. She is also cross-cultural language and academic development (CLAD) certified. She is presently a full-time fifth grade teacher in her first year of teaching. Between September 1999 and April 2004, Ms. Berberich performed her student teaching duties in five different California elementary schools. She is a member of the Hughes-Elizabeth Lakes PTA, and she recently served as a featured speaker at the Annual Meeting of the National Council of Teachers of Mathematics held in Anaheim, California. She is in the California Beginning Teacher Support and Assessment (BTSA) program and is currently enrolled in the Teaching English Learners class through BTSA. She has taken 40 units of education since earning her bachelor's degree and is presently earning 4.5 additional units. She is a member of the Community Emergency Response Team (CERT) through which she was previously in charge of coordinating emergency and disaster procedures between an after-school program and a school site. Ms. Berberich previously worked in the child care profession in which she trained in a number of areas she considers relevant to her current career. She has worked with two developmentally disabled children in an after-school program. In October 2004, Ms. Martens gave Ms. Berberich a very good observation evaluation. Ms. Martens observed Ms. Berberich in the classroom again in March 2005 but, as of the time of the hearing, had not yet published her evaluation.

18. Respondent Jeanette Cangro holds a professional clear single subject credential in mathematics. She was previously credentialed in the State of Montana. That credential has expired. Ms. Cangro presently teaches mathematics to the District's seventh and eighth graders in the District's departmentalized program. Between 1998 and 2004, she taught in the Antelope Valley Union High School District where she earned good evaluations. In that position, she chose to teach academically lower end students, 50 percent of whom were special education students. Two of her present students are also special education students. While with the Antelope Valley District, she served as that District's math instructional coach and as the "hip-hop" advisor at Quartz Hill High School. Ms. Cangro participated in a number of practica while living in Montana. She was awarded a Space Grant scholarship for the 1997-1998 academic year, one of approximately 1,500 such grants nationwide. As a new teacher, she participated in BTSA. She later served as a BTSA support advisor and performed BTSA peer coaching training services in all subjects. Ms. Cangro's biography has been published in two editions of Who's Who Among America's Teachers, an honor based on student recommendations.

19. Respondent Rhonda Gonzales holds a preliminary multiple subject teaching credential with CLAD emphasis. She presently teaches first grade for the District. Before coming to the District, Ms. Gonzales taught at Mariposa Elementary School in the Lancaster School District where she was assigned to a second/third grade classroom for her first year, and a third grade classroom the following year. As a classroom volunteer in both of her children's classrooms, Ms. Gonzales has observed and learned about teaching styles and curriculum from kindergarten through fourth grade. In the course of earning her bachelor's degree in liberal studies from California State University at Bakersfield, she was on the Dean's List on two occasions. Ms. Gonzales has been a dance instructor for 24 years, winning both studio team competitions at the local, state and national levels, and winning personal choreography awards. She has used her talents and experience in her community where she volunteers for various performance arts projects, and in her school where she serves as a coordinator for the talent show. She also serves as a coordinator for the school spelling bee. Ms. Gonzales participated in BTSA and completed several training programs offered by the Lancaster School District including "6+1 Traits of Writing," "Thinking Maps," and "Results Assessment: Grades 2-3." In her previous district, Ms. Gonzales put together IEPs for several special education students. All of Ms. Gonzales's evaluations in the two districts in which she has taught have been very good.

20. Superintendent Mertens is delighted with the performance of all three respondents. She is deeply disappointed over having to lose one of them.

///

///

## LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Cause exists to reduce the number of certificated employees of the District due to a decline in average daily attendance. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious and was a proper exercise of its discretion.

3. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

4. The Special Education FTE position is eliminated by virtue of the election of the noticed Special Education teacher (Pamela McHale) not to request a hearing on the issue. The elimination of the remaining self-contained classroom FTE position must be determined by way of the Board's tie-breaking criteria.

5. All tie-breaking criteria have been considered for all three respondents. Based on the number of tie-breaking criteria and the Board's position that the tie-breaking criteria were "not necessarily listed in order of importance," the Board granted broad discretion in determining which teachers should be retained and which must be dismissed. Despite the broad discretion granted by the Board, this case presents a particularly difficult choice between three excellent and dedicated educators.

///

///

///

///

///

///

///

///

6. The tie-breaking criteria are viewed with consideration for what will best serve the needs of the District and its students.

a. Ms. Cangro is an experienced teacher with a single subject credential in mathematics and outstanding qualifications, who is presently teaching mathematics, a core area, in a middle school. Although teachers with multiple subject credentials may teach at the middle school level, the single subject credential is best suited for that level. Ms. Berberich could use her supplementary authorization in mathematics to teach middle school mathematics, but she lacks Ms. Cangro's experience at that level, having taught in a self-contained classroom at the elementary level during her single year of teaching.

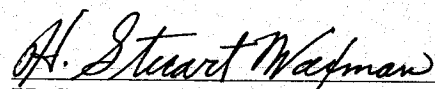
b. Ms. Gonzales and Ms. Berberich are closely matched in almost all areas. However, Ms. Gonzales is the more experienced teacher, who brings with her additional skills to enrich students' educational activities.

c. On close balance, Ms. Cangro and Ms. Gonzales should be retained.

### ORDER

1. The Accusation is sustained as to Respondent Jennifer Berberich.
2. The Board may notify Respondent Jennifer Berberich that her services will not be required for the 2005-2006 school year.
3. The Accusation is dismissed as to Respondents Jeanette Cangro and Rhonda Gonzales.
4. Notice may not be given to Respondents Jeanette Cangro and Rhonda Gonzales that their services will not be required for the 2005-2006 school year.

DATED: April 26, 2005

  
H. STUART WAXMAN  
Administrative Law Judge  
Office of Administrative Hearings