

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

In the Matter of the Accusation Against:

CERTAIN CERTIFICATED EMPLOYEES
OF THE BASSETT UNIFIED SCHOOL
DISTRICT,

Respondents.

OAH Case No. 2010030603

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on April 27, 2010, in La Puente, California.

Law Offices of Margaret A. Chidester & Associates and Margaret A. Chidester represented the Bassett Unified School District (BUSD).

Schwartz, Steinsapir, Dohrmann & Sommers and Shirley A. Lee represented the certificated employees of the Bassett Unified School District listed in Appendix A (referred to herein as Respondents).

The ALJ granted a continuance to May 14, 2010, to allow the parties to make closing argument by written briefs. The parties filed closing briefs timely. Each brief was marked for identification.

The matter was deemed submitted for decision on May 14, 2010.

Pursuant to Education Code section 44949, subdivision (e), the continuance extended the statutory deadlines for a period of time equal to the continuance, for the ALJ to issue his Proposed Decision and for BUSD to take action thereafter.

FACTUAL FINDINGS

1. Dr. Cynthia Byrd (Byrd), BUSD Assistant Superintendent of Human Resources Development, filed the Accusation in her official capacity.
2. Respondents are probationary or permanent certificated employees of BUSD.
3. On February 18, 2010, due to the State's budget crisis and an anticipated reduction in State funding, the BUSD Governing Board (Governing Board) determined to reduce or discontinue certain services within BUSD and adopted Resolution 19-10 to, among

other things, direct the Superintendent to notice those certificated employees that would reduce the number of certificated positions, as set forth in Factual Finding 8, effective the 2010-2011 school year.

4. By March 15, 2010, pursuant to Resolution 19-10, the Superintendent notified the Governing Board and Respondents, in writing, that it was the Superintendent's recommendation that Respondents be notified that Respondents' services would no longer be required for the 2010-2011 school year. The notice stated the reasons for such notice, and informed each Respondent of his or her right to request a hearing.

5. In response to the written notice, Respondents requested a hearing to determine if there is cause to not reemploy him or her for the 2010-2011 school year.

6. BUSD served the Accusation and other required documents timely on each Respondent.

7. All jurisdictional requirements were met.

8. Resolution 19-10 reduces or discontinues the following services for the 2010-2011 school year:

<u>SERVICES</u>	<u>POSITIONS (F.T.E.)¹</u>
16 Elementary K-8 multiple subject classroom teachers	16 FTE
3 Middle school 6-8 multiple subject classroom teachers	3 FTE
1 Secondary mathematics classroom teacher	1 FTE
2 Secondary English classroom teachers	2 FTE
1 Secondary history/social science teacher	1 FTE
1 Secondary Spanish language teacher	1 FTE

9. The services set forth in Factual Finding 8 are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955.

10(a). The Governing Board, through Resolution 19-10, also determined to exempt from the order of layoff certain certificated employees who have special training and experience and are assigned to teach a course of study or to fulfill a particular administrative task that others with more seniority do not possess.

¹ Full-time equivalent.

10(b). More specifically, the Governing Board seeks to exempt the following five described certificated personnel:

Certificated personnel who possess administrative credentials, who are currently assigned to administrative positions, and who will be assigned to administrative positions for the 2010/2011 school year.

Certificated personnel who possess a credential authorizing service in special education, who are presently assigned within the scope of that credential, and who will be assigned within the scope of that credential for the 2010/2011 school year.

Certificated personnel who possess a credential authorizing service in language, speech, and hearing, who are presently assigned within the scope of that credential, who will be assigned within the scope of that credential for the 2010/2011 school year.

Certificated personnel who possess a credential authorizing service as a school psychologist, who are presently assigned within the scope of that credential, and who will be assigned within the scope of that credential for the 2010/2011 school year.

Certificated personnel who possess a single subject credential authorizing service in music, who are presently assigned within the scope of that credential, and who will be assigned within the scope of that credential for the 2010/2011 school year.

11. Respondents did not contest the Governing Board's exemption criteria, or the Governing Board's application of those criteria to BUSD's certificated personnel.

12. The Governing Board, through Resolution 19-10, also determined the tiebreak criteria to be applied when certificated permanent and probationary employees share the same first date of paid service. The tiebreak criteria, referenced in the collective bargaining agreement between BUSD and the Bassett Teachers Association, consists of determining seniority by lot. Exhibit B to Resolution 19-10 states, "The district shall conduct the lottery in a fair, equitable, and reasonable manner in consultation with the association, and with association representation present."

13. Resolution 19-10 further explains that "[a]s between tied employee[s], low lottery numbers will indicate low seniority for that hire date. For example, an individual with a lottery number of '1' would be laid off before an individual with a lottery number of '10'." However, at hearing, the parties explained that those conducting and participating in the lottery utilized the inverse value of lottery numbers (the opposite of what the Resolution provided). That is, low lottery numbers indicated greater seniority and high lottery numbers indicated lesser seniority. This inconsistency is deemed a non-substantive procedural error.

14. Respondents did not contest the validity of the lottery process. They did not argue that the inverse value of lottery numbers utilized in the lottery process invalidated the lottery results.

15. BUSD identified the certificated employees providing the particular kinds of services that the Governing Board directed to be reduced or discontinued. BUSD specifically identified Respondents Vanessa Chavez, Teresa Fernandez, Jason Hill, Estela Jaeger, Wendy Max, Guadalupe Nieto, Shondale Pagano, Stella Park, Jennifer Prasad, Esther Rengpian, Isabel Reyes, Berenice Rios, Rosemary Ross², Carin Sakuma, Luz Torres, and Van Truong.

16. Respondent Jason Hill (Respondent Hill) argued that he should be retained by 0.4 FTE to teach two periods of reading/writing in the California High School Equivalency Examination program (CAHSEE). Respondent Hill's seniority date is September 1, 2007. His credentials qualify him to teach reading/writing in CAHSEE. Among others, he holds a preliminary single subject credential in English and can teach English learners (those not proficient in the English language).

17. The BUSD teacher currently teaching the two CAHSEE periods sought by Respondent Hill is a teacher named Daniel Ramirez (Ramirez). Ramirez did not testify. Ramirez was not served with notices and is not a party to this proceeding. Ramirez's seniority date is September 1, 1990. He holds a professional clear multiple subject credential and a bilingual (Spanish) cross-cultural, language, and academic development certificate (BCLAD). According to Byrd (the Assistant Superintendent of Human Resources), Ramirez is authorized to teach the CAHSEE courses by virtue of his BCLAD certificate.

18. Respondent Hill argued that BUSD has wrongly assigned Ramirez to teach reading/writing in CAHSEE, relying largely on an interpretation of the California Commission on Teacher Credentialing's Administrator's Assignment Manual (the manual). Respondents' counsel attached a portion of the manual to her closing brief as an exhibit. Respondent Hill argued that, while Ramirez is significantly more senior to him, Ramirez's credentials are not appropriate to teach in CAHSEE, whereas Respondent Hill's credentials are specifically designed for the CAHSEE courses.

19. Respondent Hill's reliance on the manual was inappropriate, as Respondent Hill did not seek to admit that manual into the record as evidence. There was no testimony regarding the manual. The portion of the manual relied upon by Respondent Hill was not authenticated. BUSD did not have an opportunity to provide testimony regarding the

² Appendix A, the list of represented Respondents proffered by Respondents' counsel at hearing, did not identify Respondent Rosemary Ross (Respondent Ross) as one of the certificated employees represented by Respondents' counsel. However, at hearing, Respondents' counsel affirmed that she represented all affected certificated employees in this matter. Further, Respondent Ross did not appear and assert self-representation or representation by another.

information contained in the manual. The portion of the manual attached to Respondents' brief cannot be and was not admitted into the record, despite the absence of an objection by BUSD.

20. Respondent Shondale Pagano (Respondent Pagano) argued that she should be retained because she is competent to teach in the Genesis Program or in an adult school position teaching English as a second language (ESL) or another program called Distance Learning (DL). The parties agree Respondent Pagano is the most senior BUSD teacher to be laid off in this proceeding. Respondent Pagano's seniority date is September 27, 2002. The parties further agree Donna Thomas (Thomas) is the teacher who currently teaches in the Genesis Program and is retiring at the end of the 2009-2010 school year. Respondent Pagano argues that BUSD should place her into Thomas's position, as the most senior Respondent competent to teach in the Genesis Program. As to the adult education classes, Respondent Pagano argues she is sufficiently senior to be placed in an adult education class position. Respondent Pagano previously taught in BUSD's adult education classes, but is now a certificated employee with permanency within the K-12 classes, not the adult education classes.

21. Respondent Estela Jaeger (Respondent Jaeger) argued that she should be retained because she is competent to teach BUSD's adult education classes and based on her seniority, she should be placed in a position to teach adult education classes. Respondent Jaeger is certificated to teach adult education classes. However, Respondent Jaeger is a certificated employee with permanency within the K-12 classes, not the adult education classes.

22. The Governing Board's decision to reduce or discontinue the particular kinds of services set forth in Factual Finding 8 was due to the anticipated decline in State funding; the Governing Board's decision was not arbitrary or capricious, but constituted a proper exercise of discretion.

23. The reduction or discontinuation of particular kinds of services related to the welfare of BUSD and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of BUSD, as determined by the Governing Board.

24. The recommendation that Respondents be terminated from employment was not related to their competency as teachers.

25. No certificated employee junior to any Respondent was retained to render a service that any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. The parties met all notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955.

2. Respondent Hill's arguments were unpersuasive. While the evidence supports his contention that he is properly credentialed to teach reading/writing in the CAHSEE program, there was insufficient evidence to establish his further contention that he should bump Ramirez out of his current assignment. There was no persuasive evidence that Ramirez was wrongly assigned or improperly credentialed to teach the CAHSEE program, especially in light of Byrd's testimony. Respondent Hill's reliance on the manual was improper and his arguments interpreting the manual's content could not be substantiated by the record.

3. Respondent Pagano's argument that she should teach the Genesis Program was unpersuasive. There was insufficient evidence regarding the Genesis Program and the current teaching position (held by Thomas) within the Genesis Program. BUSD has the discretion to fill that position and the evidence in this proceeding was inadequate to establish that Respondent Pagano should be retained specifically to teach the Genesis Program.

4. Respondents Pagano and Jaeger's arguments that they should be retained to teach adult education classes fails.

5. The Legislature created two distinct teacher categories: day school (K-12) and evening school (adult education). The Education Code mandates that service in one category cannot be counted toward service in the other.

6. Education Code section 44929.26 provides in pertinent part:

Nothing in Sections 44929.20 to 44929.23, inclusive, shall be construed to give permanent classification to a person in the adult school who is already classified as a permanent employee in the day school. In case a teacher obtains permanent classification in the evening school and later is eligible for the same classification in the day school by reason of having served the probationary period therein, he or she shall be given his or her choice as to which he or she shall take.

Notwithstanding any other provision to the contrary, service in the evening school shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee in the day school . . . Service in the day school shall not be included in computing service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee in the evening school . . .

7. Pursuant to the law, if a teacher in one category (either K-12 or adult education) wishes to switch to the other category, he or she must serve a probationary period and must then choose one category or the other. An adult education teacher switching to K-12 education would enter the K-12 program at the bottom of the seniority list, making a bump highly unlikely. Therefore, in accordance with the Education Code, adult education

teachers do not have tenure or seniority in K-12 education and cannot bump into it, and K-12 teachers do not have tenure or seniority in adult education and cannot bump into it.

8. Cause exists to sustain BUSD's action to reduce or discontinue the full-time equivalent positions set forth in BUSD's Resolution 19-10 for the 2010-2011 school year, pursuant to Education Code sections 44949 and 44955, as set forth in Factual Findings 1-25, and Legal Conclusions 1-7, and 9-13.

9. The services identified in the Resolution 19-10 are particular kinds of services that the Governing Board can reduce or discontinue under Education Code section 44955. The Governing Board's decision to reduce or discontinue the identified services was not arbitrary or capricious, but was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of BUSD's schools and pupils within the meaning of Education Code section 44949.

10. BUSD properly identified the certificated employees providing the particular kinds of services that the Governing Board directed to be reduced or discontinued.

11. A school district may reduce services within the meaning of Education Code section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

12. BUSD established cause to not reemploy Respondents for the 2010-2011 school year.

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

ORDER

The Accusations served on Respondents Vanessa Chavez, Teresa Fernandez, Jason Hill, Estela Jaeger, Wendy Max, Guadalupe Nieto, Shondale Pagano, Stella Park, Jennifer Prasad, Esther Rengpian, Isabel Reyes, Berenice Rios, Rosemary Ross, Carin Sakuma, Luz Torres, and Van Truong, providing the particular kinds of services that the Governing Board directed to be reduced or discontinued, are sustained.

Notice shall be given to Respondents Vanessa Chavez, Teresa Fernandez, Jason Hill, Estela Jaeger, Wendy Max, Guadalupe Nieto, Shondale Pagano, Stella Park, Jennifer Prasad, Esther Rengpian, Isabel Reyes, Berenice Rios, Rosemary Ross, Carin Sakuma, Luz Torres, and Van Truong, that their services will be terminated at the close of the 2009-2010 school year.

The Accusations served on all other Respondents are dismissed.

Dated: May 18, 2010

DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

Appendix A

Respondents In Case Number 2010030603

1. Bowers, Wendy	28. McCandliss, William
2. Carrillo, Dora	29. Merrel, Anne
3. Chavez, Vanessa	30. Mora, Ryann
4. Corado, Nancy	31. Mordon, Shirley
5. Cordero, Cristina	32. Nieto, Guadalupe
6. Covington, Thomas	33. Oh, Stacy
7. Crozier, Dorothy	34. Pagano, Shondale
8. De La Rosa, Chona	35. Park, Stella
9. Doerner, Lynda	36. Perez, Margarita
10. Felix, Heather	37. Pinell-Hernandez, Lisa
11. Fernandez, Teresa	38. Prasad, Jennifer
12. Fitch, Christopher	39. Rengpian, Esther
13. Fuentes, Jesus	40. Reyes, Isabel
14. Gallo-Ramirez, Jessica	41. Rios, Berenice
15. Garcia, Maria Teresa	42. Sakuma, Carin
16. Garcia, Martha Celina	43. Saravia, Jacob
17. Gutierrez, Jesus	44. Schlitt, Audrey
18. Heggins, Erica	45. Senter, Lori
19. Henderson, Tamara	46. Simpson, Sean
20. Herrera, Maria	47. Strickland, Denise
21. Hill, Jason	48. Tiscareno, Rene
22. Jaeger, Estela	49. Torres, Luz
23. Larson, Jacqueline	50. Truong, Van
24. Lerma, Meghan	51. Valencia, Yvette
25. Mamea, John	52. Villanueva, Yvonne
26. Martin, William	53. Watson, Nona
27. Max, Wendy	