

BEFORE THE  
BOARD OF EDUCATION  
BEAR VALLEY UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2011031301

Respondents listed in Appendix A.

**PROPOSED DECISION**

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Blue Jay, California on April 25, 2011.

Todd M. Robbins, Atkinson, Andelson, Loya, Ruud & Romo, APLC, Attorneys at Law, represented the Bear Valley Unified School District.

Michael D. Hersh, California Teachers Association, Attorney at Law, represented the respondents listed in Appendix A.

The matter was submitted on April 25, 2011.

**FACTUAL FINDINGS**

1. Tim Larson, Director of Personnel/Educational Services of the Bear Valley Unified School District, made and filed the accusation dated March 11, 2011, in his official capacity as the designee of Dr. Kegham Tashjian, Interim Superintendent.

2. Respondents<sup>1</sup> are certificated District employees.

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<sup>1</sup> The District initially identified 13 certificated employees as respondents designated for lay off, and three other individuals who were designated to receive "precautionary" layoff notices. Four of the 13 individuals designated for actual lay off (Sharon Rizzo, Jana Roberts, Richard Vasquez, and Shauna Ward) did not request a hearing. During the course of the hearing, the district determined that one of the three individuals designated to receive a precautionary layoff notice (Laura Pelaez-Guzman) should have been designated for actual layoff, but due to inadvertence was not. At some point, the district apparently determined that another of the individual initially designated for actual layoff (Linda Pierce-Estes) was no longer to be designated as such. By the end of the hearing the number of respondents

3. On March 2 and 11, 2011, in accordance with Education Code sections 44949 and 44955, the interim superintendent notified the Board of Trustees of the Bear Valley Unified School District in writing of his recommendation to reduce or discontinue particular kinds of services for the upcoming school year. The interim superintendent stated the reasons for the recommendation.

4. On March 11, 2011, the board adopted Resolution No. 10-11-015, determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The board determined that the particular kinds of services that must be reduced for the 2011-2012 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
High School Freshman Studies Teaching Services	0.2
High School English/Language Arts Teaching Services	0.6
High School Physical Education Teaching Services	0.2
High School Math Teaching Services	0.2
High School Activities Director Services	0.2
High School Athletic Director Services	0.2
High School Social Studies Teaching Services	0.4
Elementary Music Teaching Services	0.43
Elementary (K-6) Classroom Teaching Services	6
Middle School Math Teaching Services	0.8
Middle School Science Teaching Services	0.6
Middle School Opportunity Teaching Services	0.6
Elementary Special Education Teaching Services	1

The proposed reductions totaled 11.43 FTE positions.

5. The board directed the interim superintendent or his designee to determine which employees' services would not be required for the 2011-2012 school year as a result of the reduction of the foregoing particular kinds of services. The board further directed the interim superintendent or his designee to send appropriate notices to all is employees of the district who would be laid off as a result of the reduction of these particular kinds of services.

6. The board further determined in Resolution No. 10-11-015 that "competency," as described in Education Code section 44955, subdivision (b), for the purposes of bumping, "shall necessarily include possession of a valid credential in the relevant subject matter area, 'highly qualified' status under the No Child Left Behind Act in the position into which the employee is bumping, an appropriate El Authorization (if required by the position), and for

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designated for actual lay off had thus been reduced to the 9 individuals identified in Appendix A. The term "respondents" as hereafter used in this Proposed Decision refers collectively to these 9 remaining individuals.

counseling positions, at least one (1) year of experience in the past three (3) years in a counseling position.”

7. On or before March 15, 2011, the district timely served on respondents a written notice that the interim superintendent had recommended that their services would not be required for the upcoming school year. The notice set forth the reasons for the recommendation. The notice advised respondents of their right to a hearing, that each respondent had to deliver a request for a hearing in writing to the person sending the notice by the date specified in the notice, a date which in each case was more than seven days after the notice was served, and that the failure to request a hearing would constitute a waiver of the right to a hearing. Along with the written notice, the district timely served on respondents the accusation and required accompanying documents.

8. Respondents timely filed written requests for hearing and notices of defense to determine if there was cause for not reemploying them for the upcoming school year. All pre-hearing jurisdictional requirements were met.

9. Respondents are probationary or permanent certificated employees of the district.

10. The services the board addressed in Resolution No. 10-11-015 were “particular kinds of services” that could be reduced or discontinued within the meaning of Education Code section 44955. The board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious and constituted a proper exercise of discretion.

11. The reduction or discontinuation of particular kinds of services related to the welfare of the district and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the district as determined by the board.

12. The board considered all positively assured attrition, at least up to the date of the hearing, in determining the actual number of necessary layoff notices to be delivered to its employees.

13. Respondent Laura Pelaez-Guzman was hired by the district on January 17, 2011, as a teacher on assignment (TOA) serving as a district-wide English Language (EL) specialist. Pelaez-Guzman’s assignment is a 0.6 FTE position. She serves as a liaison between the district, the Spanish-speaking public, teachers, and the county.

Pelaez-Guzman has a multiple subject bilingual cross cultural credential with a Spanish emphasis. She has a Bilingual Crosscultural, Language, and Academic Development (BCLAD) certificate. She has worked with English Learners for 29 years. She is well acquainted with federal and state EL mandates and has helped the district come into compliance with those mandates.

The district hired Pelaez-Guzman because no district employee had the same qualifications and background as she.

Pelaez-Guzman's TOA position is not slated for layoff. However, the district proposes that she be laid off based on displacement by two senior employees, John Kent (0.4 FTE) and Michael Hahn (0.2 FTE).

Pelaez-Guzman testified that she believes that being bilingual is essential to her job, so that she can communicate with the many monolingual, Spanish-speaking parents of EL students. She added that prior to her employment with the district, Spanish-speaking parents were not actively involved with the district, and she has seen substantial changes since her employment began.

Pelaez-Guzman testified that though being bilingual is a preferred qualification for her job, it is not required by her job description.

Based on Pelaez-Guzman's testimony, there is no question that she has served an important and in fact unique role with the district and provides a great service to the community, in particular to the district's EL students and their parents. No evidence was offered to contest her testimony that she is the most qualified district employee for her current position. However, the law does not require, or even permit, the district to retain her simply because she is the most qualified individual to hold her position. Instead, the law requires that the district retain more senior employees, as long as they are certificated and competent to serve in a junior employee's position, based on competency criteria the district implements. Though neither Kent nor Hahn has BCLAD certification, they both have another kind of EL authorization, have appropriate credentials, and are NCLB compliant to serve in Pelaez-Guzman's position. They are thus both certificated and competent pursuant to the district's bumping criteria (Finding 6) to displace her.

Accordingly, the district properly determined that Kent and Hahn may displace Pelaez-Guzman.

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

## 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. A district may reduce services within the meaning of 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.)

3. Pursuant to section 44995, a senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

4. The decision to reduce or discontinue a particular kind of service is not tied in with any statistical computation. It is within the governing authority’s discretion to determine the amount by which a particular kind of service will be reduced or discontinued as long as the district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.) A school district has wide discretion in setting its budget and a layoff decision will be upheld unless it was fraudulent or so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law. (*California Sch. Employees Assn. v. Pasadena Unified Sch. Dist.* (1977) 71 Cal.App.3d 318, 322.)

School districts have broad discretion in defining positions within the district and establishing requirements for employment. This discretion encompasses determining the training and experience necessary for particular positions. Similarly, school districts have the discretion to determine particular kinds of services that will be eliminated, even though a service continues to be performed or provided in a different manner by the district. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.) Districts also retain discretion to determine standards of competency for purposes of teacher layoffs, and those standards will be upheld as long as they are reasonable. (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565.)<sup>2</sup>

5. A preponderance of the evidence sustained the charges set forth in the accusation against all respondents except for Manuel Marquez and Michael Hahn. Cause exists under Education Code sections 44949 and 44955 for the district to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. Cause exists to reduce the number of certificated employees of the district due to the reduction and discontinuation of particular kinds of services. The district identified the certificated employees providing the particular kinds of services that the board directed be reduced or discontinued. It is recommended that the Board give all respondents except Manuel Marquez and Michael Hahn notice before May 15, 2011, that their services are no longer required by the district.

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<sup>2</sup> *Duax* involved the layoff of community college teachers pursuant to Education Code section 97743, but is applicable here by analogy.

6. A preponderance of the evidence did not sustain the charges set forth in the accusation against respondents Manuel Marquez and Michael Hahn. It is recommended that the Board not give notice to respondents Manuel Marquez and Michael Hahn notice before May 15, 2011, that their services are no longer required by the district.

#### ADVISORY DETERMINATION

The following advisory determination is made:

The accusations served on all respondents except for respondents Manual Marquez and Michael Hahn are sustained.<sup>3</sup> Notice shall be given to all respondents except for respondents Manual Marquez and Michael Hahn before May 15, 2011, that their services will not be required because of the reduction or discontinuation of particular services as indicated.

The accusations served on respondents Manual Marquez and Michael Hahn are dismissed.

DATED: April 28, 2011

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DONALD P. COLE  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>3</sup> Where the lay off of a respondent is less than a full-time-equivalent position, the applicable fraction of a full-time-equivalent position is indicated in parentheses opposite the individual's name.

## Appendix A

1. Michael Hahn
2. Jeremy Little
3. Manual Marquez
4. Susan Maya
5. Sharon Meagher
6. Karin Parks
7. Laura Pelaez-Guzman
8. Katherine Williams
9. Joy Wright