

BEFORE THE
GOVERNING BOARD OF THE
HOLLISTER SCHOOL DISTRICT

In the Matter of the Non-Reemployment of
71 Full-time Equivalent Certificated
Employees,

Respondents.

OAH No. 2010030642

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, State of California, Office of Administrative Hearings, heard this matter in Hollister, California, on April 20, 2010.

Janae Novotny, Attorney at Law, Burke, Williams & Sorensen, LLP, represented the Hollister School District.

Michelle A. Welsh, Attorney at Law, Stoner, Welsh & Schmidt, represented all of the Respondents.

The record closed on April 20, 2010.

SUMMARY

The Board of Trustees of the Hollister School District decided to discontinue particular kinds of services provided by teachers in the 2010-2011 school year for budgetary reasons. The decision was not related to the competency and dedication of those whose services were proposed to be eliminated. The process complied with Education Code requirements.

FACTUAL FINDINGS

1. Ronald F. Crates, Ed.D., filed the Accusation in his official capacity as Superintendent of the Hollister School District (District).

2. All Respondents are certificated employees of the District. A list of the Respondents is attached as Exhibit A.

3. On February 23, 2010, the Board of Trustees of the Hollister School District adopted Resolution Number 11:09-10, in which the Board resolved to reduce or eliminate particular kinds of services no later than the beginning of the 2010-2011 school year. The reduction of the following full-time equivalent (FTE) positions was approved and are anticipated:

<u>Services to be Reduced</u>	<u>FTE</u>
Administrative Services – Assistant Superintendent	2.0
Administrative Services – Chief Business Official	1.0
Administrative Services – Director, Technology	1.0
Administrative Services – Elementary Principal	2.0
Administrative Services – Middle School Vice Principal	1.5
Administrative Services – Elementary Vice Principal	2.5
Kindergarten Teacher	6.0
First Grade Teacher	6.0
Second Grade Teacher	6.0
Third Grade Teacher	5.0
Fourth Grade Teacher	3.0
Fifth Grade Teacher	3.0
Sixth Grade Teacher	3.0
BTSA Teacher	1.0
Language Arts Teacher	2.0
Math Teacher	2.0
Physical Education Teacher	2.0
Special Education services provided by Education Specialist Instruction credential holders with a specialization in Mild/Moderate disabilities	2.0
Resource Teacher	13.5
Science Teacher	2.0
School Counselor	1.0
School Nurse	0.5
Social Studies Teacher	2.0
<u>Teacher on Special Assignment</u>	<u>1.0</u>

Total FTEs: 71

4. On March 9, 2010, the Board adopted Resolution Number 14:09-10, which contains criteria that the Board decided were sufficiently important to warrant deviating from seniority order when instituting the reductions. In pertinent part, it states:

. . . [P]ursuant to Education Code Section 44955(d)(1), the Board determines that the District has a specific need to provide certain special education services and music services, and that it will be necessary to retain the services of some permanent and probationary certificated employees in the 2010-2011 school year regardless of

seniority, who possess the credentials, qualifications, training and experience needed to maintain mandated services and/or specialized programs/services provided by the District, including, but not limited to the following programs: 1. Music, and 2. Special Education services.

5. On January 26, 2010, the Board adopted Resolution 9:09-10, which contains the criteria to be used to determine the order of termination of certificated employees with the same first date of paid service. These criteria are commonly referred to as the tie-breaking criteria. They are listed, “not in order of priority,” as follows:

- 1) Breadth of credential authorization
 - Multiple credentials, allowing flexibility of assignment and ability to undertake multiple assignments as District’s needs change
- 2) No Child Left Behind highly qualified teacher status for current assignment
- 3) Advanced degrees in current assignment or credential-related subject areas
- 4) Greatest number of post-BA accredited college units on file with the District in current assignment or credential-related areas
- 5) Teaching experience in multiple subjects or grade levels in areas of anticipated need
- 6) Greatest number of years teaching in California public elementary and secondary schools outside the District

The resolution directed the Superintendent or his designee to apply “the adopted criteria to the affected employees to determine order of termination as related to the needs of the District and its students.”

6. In connection with the consideration of Resolution Number 9:09-10, Dennis D. Kurtz, Assistant Superintendent for Administration and Human Relations, explained to the Board how the process would be implemented. In connection with Kurtz’s presentation, the Board was provided a sample tie-breaker worksheet proposed for use in determining the number of points each teacher in a tie situation would receive and a sample letter to affected teachers. The letter explains how the criteria were implemented and how to check for accuracy. It also includes the point values to be assigned to each criterion:

Column 1: Breadth of Credential – For every credential, certificate or authorization *from the CCTC*, you receive 50,000

points. Certificates earned at workshops, and credentials that are not from California do not count. [Emphasis in original.]

Column 2: NCLB HQT status – Most teachers are Highly Qualified, and receive 1000 points. If you are assigned in a subject area not requiring you to be ‘Highly Qualified’, and therefore are not so qualified, then you receive 750 points. Only teachers who should have HQT status, but for some reason do not, receive -900 points.

Column 3: Advanced Degrees – For every Masters or Doctorate from an accredited university that we had on file as of September 10, 2009, you receive 500 points. (HESTA contract § 11.9.3)

Column 4: # of Post-Baccalaureate Accredited College Units – For each semester unit, you receive 10 points. The Baccalaureate can be either a BA or BS; transcripts had to have been on file in the District Office as of September 10, 2009. (HESTA contract § 11.9.3)

Column 5: Teaching Experience in multiple subjects/grade levels – This one is complicated. The intent is to give greater credit to those teachers who have taught at more than one grade level, or in more than one subject area at the middle school level. For every different such assignment *in the Hollister School District*, you may receive up to 2 points total, provided you taught in that assignment for a year or more (1 point for half a year or for a semester). So, some examples; if you have taught the same grade level for 5 years, you receive 2 points. If you have taught for 5 years – 2 years at 2nd grade and 3 years at 1st grade – you receive 4 points. If you started in Kindergarten, and then changed mid-year for some reason to 1st grade, followed by an entire year in 1st grade, then you receive 3 points (1 for Kinder and 2 for 1st grade). Combination classes count double, so a year of teaching a K/1 combo receives 4 points. If you were a part-time Vice-Principal/part-time Resource Teacher for 1 year, you receive 1 point; for 2 or more years, 2 points. In Middle School, for example, a teacher teaching both Language Arts and Social Science in the 7th and 8th grades for a year receives 4 points. SDC and RSP teachers teach students at multiple grades; they receive 6 points for each assignment. [Emphasis in original.]

Column 6: # of Years teaching in California public schools –

You receive 0.1 points per year for every year taught in California, whether in Hollister or not, but only for public school service.

The Board had all of this information prior to voting to adopt Resolution 9:09-10. It was established that District staff acted with the authority of the Board in applying the tie-breaking criteria.

7. The District's Seniority List was used to determine who would receive notices. District staff made every effort to ensure accuracy by requesting information from teachers, accessing personnel files and checking the credential information online. A Seniority Tie-Breaker Worksheet was used to determine the order of those with the same start date. On March 11, 2010, written notice of the recommendation that their services will not be required for the 2010-2011 school year (the preliminary notice) was personally served on 80 employees. The documents were also sent by registered mail.

8. Each of the Respondents filed a timely request for hearing. Accordingly, an Accusation was filed and served. Each Respondent except for five filed a timely notice of defense. The District waived the late notices of defense for those five Respondents.

9. The District did not send Respondents the requisite notice of hearing (specifying the date, time and place for the hearing) in a timely manner. It was sent out just four days prior to the hearing date, instead of the ten days required by statute. Nonetheless, notice was in fact received by Respondents prior to the hearing and all either attended or chose not to attend. Respondents, through counsel, stipulated that they had no evidence of prejudice to present concerning the late notices of hearing.

10. Kurtz credibly testified about the reasons for the Board's resolutions. The District serves approximately 5,581 students in grades Kindergarten through eight. The District has been in a precarious financial situation for some time, resulting in the requirement that special financial reports be provided to the San Benito County Office of Education. Presently, the District is having difficulty meeting its payroll obligations. Due to an anticipated shortage of approximately \$6 million, which represents one-seventh of its budget, the District was required to look at areas to reduce next year.

11. The District does not require any BCLAD certified teachers because it currently does not offer any bi-lingual instruction. Students with limited English skills are taught by teachers with appropriate authorizations.

12. One of the consequences of the reductions will be some increases in class sizes, including in physical education classes. The District's reductions in physical education will still allow provision of those services at the state-mandated levels.

13. The District does not offer any GATE instruction for which the state requires a particular credential or authorization. Training requirements for GATE teachers are determined and imposed by the District or the principal at the particular school.

Objections of particular teachers/employees

– Start date corrections

14. The District stipulated that the following start dates (dates of first paid service with the District) would be changed as follows: Beatrice Hurtado to August 26, 2002; Jennifer Liversage to August 8, 2002; and Joseph Rivas to August 24, 2005. The change to Rivas's start date will place him in a tie with other teachers. It was further stipulated that he will be allowed to review the District's application of the tie-breaking criteria to his status when it is completed.

– Tie-breaking corrections: April Santiago and Deborah Booth

15. The District stipulated that April Santiago will receive credit for No Child Left Behind highly-qualified teacher status. Thus, the negative 900 points currently showing on the tie-breaker worksheet will be removed and she will receive 1,000 points.

16. Deborah Booth currently is a "newcomer teacher" for the District. She holds a clear multiple subject credential and a Bilingual Certificate of Competency (BCOC). The BCOC has been replaced by the BCLAD. Booth is in a tie with several other teachers and asserts that the tie-breaking criteria have not been applied correctly to her. She believes she is entitled to four more points: two for her first year at the District and two for this year.

17. If records produced by Booth verify this information, the District shall award Booth additional tie-breaking points as warranted.

– Those holding BCLADS: Erika Contreras-Sanchez, Ronna Gilani, Richard Guzman, Micaela Hedden, DeAnna Macias-Cortez, Jose Rivera, Patricia Rodriguez, and Kathy Ruiz

18. Erika Contreras-Sanchez is currently assigned as a migrant research teacher at the District office. She holds a clear multiple subject credential, a supplemental Spanish credential, and a BCLAD. In past years, she has held a position that required her to have a BCLAD because she taught in Spanish. She requests that if a position requires a BCLAD, she be retained for that position. It was stipulated that, if called to testify, the other teachers holding BCLAD's would make the same request. No evidence was presented to cause concern that the District will do otherwise.

– Those holding a GATE certificate or authorization: Dawn Daugherty, Cynthia Annoti, Diana Flores, Mary Langstaff, and Carol Maddock

19. Students accepted into GATE programs have special needs and require different teaching modalities. Certification to teach a GATE program can be granted by the Commission on Teacher Credentialing. In addition, there are certificate programs administered by universities, school districts, and county offices of education. Most districts require some type of certificate or authorization to teach GATE.

20. Dawn Daugherty currently teaches a 5th grade GATE class at the Accelerated Achievement Academy on the Calaveras Elementary School campus. She holds a clear multiple subject credential and a GATE certificate she earned from California State University at Fullerton.

21. As stated above, the District's tie-breaking criteria provide for 50,000 points in the "breadth of credential" category. Daugherty requests that she be credited with those points based upon her GATE certificate. It was stipulated that, if called to testify, the other teachers holding a GATE certificate would make the same request.

22. The District stipulated that Daugherty will receive tie-breaking credit for her university-level GATE certification. The District also stipulated that if Carol Maddock supplies proof to the District that her GATE certification is from a university-level course, she will also receive tie-breaker credit.

23. It was not demonstrated that the distinction the District draws between a university-level GATE program and other course of study within its tie-breaking criteria was arbitrary or capricious. Such a distinction is within the District's discretion. Accordingly, there is no basis to require the District to also award points for breadth of credential to non-university level GATE certificates or authorizations.

24. The teachers holding GATE certifications also request that if GATE classes are provided, that they be retained in seniority order to teach those classes. No evidence was presented to cause concern that the District will do otherwise.

-School nurse: Anita Sarringhaus

25. The District's plans include reducing nursing services from 1.5 FTE to 1 FTE position. Kurtz anticipates that the remaining nurse will be able to provide all of the state-mandated services, including various types of screenings. Many of these may be performed by other staff after training by a nurse. There are staff at every school site trained to conduct certain screenings and administer medications, as allowed, and perform other health-related tasks after appropriate training. Providing required services and conducting training will be the top priority for the remaining District nurse. In addition, it is noted that the District has hired additional nurses as independent contractors to provide required services, including assisting certain medically fragile students.

26. Anita Sarringhaus holds the .5 FTE nursing position proposed for elimination. She testified knowledgeably concerning the value of school nursing, particularly in San

Benito County. Sarringhaus listed all of the services that she and her fellow nurse perform. They are many and varied. Some are legally mandated and some are not. Sarringhaus is very concerned that the proposed reductions will prevent provision of nursing services mandated by state law. She notes that standards issued by the California Board of Registered Nursing and other organizations state that there should be one registered nurse for every 1,000 regular education students.

27. It was contended both that the proposed reduction would reduce services below those mandated by law and that it would violate Education Code section 49400, which requires that districts “give diligent care to the health and physical development of pupils.” The evidence did not demonstrate that the .5 FTE reduction will reduce District nursing services below legally mandated levels or prevent the District from providing “diligent care.” No abuse of discretion was shown. Accordingly, cause does not exist to exempt Sarringhaus from layoff.

28. The Board’s decision to reduce or discontinue the identified services was made solely on the basis of the needs of the District and its pupils.

29. No permanent or probationary employee with less seniority is being retained to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1 This hearing is convened pursuant to certain provisions set forth in the Education Code and in the Government Code. Section 11509 of the Government Code requires that a notice of hearing be served on a respondent at least ten days prior to the hearing date. In this matter, the District conceded a violation of Government Code section 11509. The Notice of Hearing was sent to Respondents only four days prior to the hearing.

Education Code section 44949, subdivision (c)(3), provides that “nonsubstantive procedural errors committed by the school district . . . shall not constitute cause for dismissing the charges unless the errors are prejudicial errors.”

Respondents represented that they had no evidence of prejudice to present as the result of the District’s failure to comply with Government Code section 11509. All had actual notice of the hearing, were represented by counsel at the hearing, and were present themselves as they chose. Under these circumstances, it is concluded that the failure to provide 10 days’ notice of the hearing was a nonsubstantial procedural error and that it does not constitute cause for dismissing the charges.

2. All notices and other requirements of Education Code sections 44949 and 44955 have been provided as required. The District established jurisdiction for this proceeding as to each Respondent.

3. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services.

ORDER

Notice may be given to Respondents that their services will not be required for the 2010-2011 school year because of the reduction or discontinuation of particular kinds of services.

DATED: _____

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT 1: LIST OF RESPONDENTS

Last Name	First Name
Annotti	Cynthia
Berry	Christopher
Bonura	Stacie
Boothe	Debora
Brewster	Frederick
Chamblin	Summer
Contreras-Sanchez	Erika
Daugherty	Dawn
DeLaMere	Katherine
Flores	Diana
Fontaine	Julie
Fowles	Jamie
Gauvreau III	Donald
Gaver	Jananne
Gilani	Ronna
Guzman	Richard
Hedden	Micaela
Hudson	Matthew
Hurtado	Beatrice
Jacinto	William
Jelinek	Lisa
Jimenez-Bedolla	Mark
Koch	Mistee
Langstaff	Mary
Larson	Kathleen

Last Name	First Name
Lino	Roxane
Littleton	Marcia
Liversage	Jennifer
Macias-Cortez	Deanna
Maddock	Carol
Mahler	Maylani
Marci	Denae
Mercure	Susan
Morales	Joshua
Naegele	Brandi
Ostoja	Jeannine
Parcell	William
Parra	Andrew
Pellin	Kellie
Penney	Barbara
Peters	Timothy
Ramos	Jeanne
Rivas	Joseph
Rivera	Jose
Rodriguez	Patricia
Ruiz	Kathy
Santiago	April
Sarringhaus	Anita
Schneider	Elizabeth
St. John	Cami
Talavera	Gabriel
Talavera	Michelle

Last Name	First Name
Ureno	Maria
Villegas	Mary
Wynn	Britney