

BEFORE THE
GOVERNING BOARD OF THE
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter Of The Accusations Against:

Bobby Jo Anderson
Judy M. Baker
Nora Barnett
Ranu Bhatt
Betty Biederman
Ingrid Brosas
Vienna M. Bustos
Mary L. Carboni
John R. Castro
Scott G. Chapman
Kristen I. Cluff
Linda Rae Cochran
Gary M. Corbett
Peter J. Crawford
Rebecca S. Cunningham
Jeanne D'Angelo
Barbara L. Edwards
Maria Estrada-Stetson
Melinda R. Franzoni
Sara Gilbert
Cheri Harris-McCaskill
Mary A. Hornsby
Michael L. Howell
Mark James
Irene Jewett
Maria Johnson
Wallace D. Johnson
Tamzin L. Johnson-Ellsworth
Rachelle L. Kane
Melanie Ann Karnes
Cathy Katsura
Beatrice M. Laguana
Steven G. Laney
Susan L. Lee
Tiffany Lee

OAH No. N2004030354

Lisa Levasseur
Norberto Martin
Wendy Martinez
Amber Matranga
Julia A. Mayer
Robyn McNary
Linda L. Mellor
Teresa A. Merkley
Sherry Milton
Brian Mitchell
Christine Mitchell
Conrad Mizuno
Wendy Money
Karen K. Motoike-Lim
Roswitha Mueller
Cynthia Newton
Carla Otoy-Hart
Matthew G. Pesci
Geoffrey W. Pike
Elizabeth Reyes
Ted Richardson
Marilyn M. Riffel
Gary T. Sekikawa
Shelly Silveria
Cheryl L. Sims
Tara Snyder
Lynnette M. Thompson
Sarita Turner
Virginia C. Uzelac
Nikki Waldron
Richard L. Waller
Marley A. Watters
Linda Wortman
Donna L. Zahniser,

Respondents.

PROPOSED DECISION

M. Amanda Behe, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 20, 21, 22, and 23, 2004, at the Sacramento City Unified School District, Sacramento, California.

James Scot Yarnell, Atkinson, Andelson, Loya, Ruud & Romo, represented the Sacramento City Unified School District.

Margaret Geddes, Law Offices of Margaret Geddes, and Costa Kerestenzis, Beeson, Tayer & Bodine, represented respondents listed in the above caption with the exception of Shelly Silveria.

Respondent Shelly Silveria represented herself.

The record remained open for receipt of the parties' closing briefs. On April 30, 2004, the District's Closing Brief was filed electronically as Exhibit 15, and Respondents' Closing Brief was filed electronically as Exhibit KKK. The matter was submitted on April 30, 2004.

By stipulation of the parties the exhibits in the record which contain employees' Social Security numbers are returned sealed and may only be opened upon the order of the Governing Board or the Superior Court of the State of California, County of Sacramento.

FACTUAL FINDINGS

1. The Sacramento City Unified School District (the District) serves approximately 49,000 students from kindergarten through grade 12 at 83 school sites, including 59 elementary and 10 K-8 schools. The District currently has a class size reduction program with a maximum of 20 students per class in grades K-3, and 32 students per class in grades 4-6. The District employs approximately 2700 permanent and probationary certificated employees.

The District anticipates a \$26 million budget shortfall and under-enrollment¹ of approximately 1,200 students for the 2004-05 School Year. In the spring of 2004 the Budget Committee formulated recommendations to address the expected decrease of funding and devised three alternative proposals for reduced staffing for the 2004-05 School Year. Their calculations included that the expected under-enrollment represents approximately 55 full-time equivalent (FTE) teachers, and decreasing the class size reduction program represents approximately 60 FTE teachers per grade level.

2. M. Magdalena Carrillo Mejia, Ph.D., has been the Superintendent of the District since January 5, 2004. Dr. Mejia was informed of the Budget Committee's study of the expected funding shortfall and three alternative staffing proposals.

¹ Approximately 49,000 students are enrolled in the current school year, down from last year's enrollment of about 50,000 and the preceding year's enrollment of over 51,000 students.

3. On March 11, 2004, the Governing Board (the Board) was given notice in accordance with Education Code section 44949 and 44955 of the Superintendent's recommendation that certificated employees be notified that their services would not be required for the ensuing school year and stating the reasons for that recommendation. The three alternative proposals were considered by the Board, and they incorporated one proposal in Resolution No. 2343.

4. Board Resolution No. 2342, adopted on March 11, 2004, provided for a layoff of 129.32 FTE certificated employees. Specifically, the Board Resolution provided for the reduction or elimination of the following particular kinds of services:

		Full Time Equivalence (FTE)
Administrators		
-High School Vice Principals		4.0
-Vice Principal, Elementary School	0.70	
Sub Total:		4.70
Teachers		
-Elementary Teachers		115.0
-Elementary Teacher	1.44	
-Middle School Teacher		1.0
-PE Teachers	2.0	
-Foreign Language: French Teacher		0.80
-Nurse	0.40	
-Teacher, Resource	3.25	
-Psychologist	0.73	
Sub Total:		9.62
Total Teachers:		124.62

Board Resolution 2342 further provided that as between certificated employees with the same seniority date, the order of termination shall be based on the needs of the District and the students thereof, as defined by Board Resolution 2343 [Finding 7, below].

Board Resolution 2342 further stated that as between employees who are fully credentialed and employees who are not, those who are fully credentialed shall be given priority in regard to order of termination/reduction.

Board Resolution 2342 further provided that as between employees who are fully credentialed and have secured the CLAD requirement (Cross-cultural, Language and Academic Development) and employees who have not, those who have the CLAD requirement shall be given priority in regard to order of termination/reduction.

5. Carol Mignone, the District's Chief Personnel Officer, described that the term "fully credentialed" in Board Resolution 2342 referred to employees who hold a clear or preliminary credential. The term was used in the Board's layoff Resolution in School Year 2003-04.

6. The Board stated at the March 11, 2004, meeting that the reference in its Resolution 2342 to "the CLAD requirement" meant a Cross-cultural, Language and Academic Development (CLAD) credential and all equivalent credentials or certificates which authorize teachers to provide English Language Development (ELD) instruction and Specially Designed Academic Instruction in English (SDAIE) to English Learner (EL) students. Such credentials include a Bilingual Cross-cultural, Language and Academic Development (BCLAD), a multiple or single subject credential with a BCLAD Emphasis, a Language Development Specialist (LDS) certificate, a Bilingual Certificate of Competence, or a Certificate of Completion of Staff Development (SB 395 or SB 1969).

7. Board Resolution 2343, adopted on March 11, 2004, provided criteria² used to determine the order of termination of certificated employees who first rendered paid service on the same date and the weight to be given to such criteria. The resolution was not required or used in the subject layoff proceeding.

8. Board Resolution 2346, adopted on March 11, 2004, provided for the possible release/reassignment of certificated and classified administrators.

The Personnel Department implemented Resolution 2346 and sent layoff notices to 129 classified and certificated administrators. Some certificated administrators have return rights to teaching positions, and may "bump"³ less senior incumbents in those positions.

9. The District released its 224 temporary employees and issued Notices of Non-re-election to its first and second year probationary certificated staff.

Respondents Martin and Matranga are interns classified as temporary certificated employees pursuant to Education Code section 44885.5. Respondents did not establish that they are employed to backfill for employees on leave of absence or that they work in a categorical program. Respondents did not establish that they are incorrectly classified as temporary certificated employees.

10. On March 15, 2004, either by personal delivery or by depositing in the United States registered mail, postage prepaid and addressed to the employee's last known address,

² Resolution 2343 specifically provided that its purpose was solely the determination of the relative order of termination of certificated employees as part of the subject layoff and not for any other purpose, including, but not limited to, any subsequent layoffs.

³ A senior credentialed employee whose position is discontinued has the right to a continuing position which he or she is certificated and competent to fill. In effecting that right, 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.

the District served 112 affected employees with written notice that it had been recommended that notice be given pursuant to Education Code sections 44949 and 44955 that their services would not be required for the ensuing school year and setting forth the reasons for the recommendation. Two interns classified as temporary employees received "double notices" of layoff and non-reelection.

Each notice further advised the employees of their right to a hearing, including that such a request must be delivered in writing to the person sending the notice of termination, and that the failure to request a hearing would constitute the waiver of the right to a hearing.

11. Certificated employees Pamela Pitcock, Thurrell Sanders, Kim Williams-Schouten, Mary Jo Young, and Carmen Hernandez did not file timely requests for hearing. On April 14, 2004, the District filed a Pre-hearing Conference Statement which included its motion to strike those individuals as respondents. On April 15, 2004, Ms. Geddes filed Respondents' Opposition to that motion. The matter was argued and considered at the April 16, 2004, telephonic Pre-hearing Conference.

Education Code section 44949 provides in relevant part that; "If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing."

Pursuant to Education Code section 44949, the District's motion to strike as respondents certificated employees Pamela Pitcock, Thurrell Sanders, Kim Williams-Schouten, Mary Jo Young, and Carmen Hernandez was granted.

12. Seventy-six certificated employees who are designated as respondents filed timely requests for hearing.

13. The District filed Accusations which were timely served on respondents as required by the Education Code, and the information that a Notice of Defense must be filed within five days pursuant to Education Code section 44944(c)(1).

Various Accusations were dismissed at hearing.

14. Each respondent appearing in this matter filed a timely Notice of Defense.

15. Every four years the California Department of Education (CDE) conducts Coordinated Compliance Reviews of school districts receiving state and federal categorical funds including programs for ELs. If the review determines that a district is out of compliance with relevant statutes or regulations it must submit a compliance resolution within 45 days. A district's failure to come into compliance can jeopardize its funding. A separate CDE "Comite" unit specially addresses districts which have been found out of compliance. The District was in "Comite" status, or under on-going compliance scrutiny, from January 1994 to March 2002.

In May 2003 following a Coordinated Compliance Review the CDE found that the District was out of compliance in 14 of 21 items. Its "Notification of Findings" contained two assertions of non-compliance, both confusingly identified by "site name" as "Johnson HS Districtwide (sic)." The first finding stated that unspecified "evidence" indicated an "inadequate number of qualified teachers" have been assigned to implement the English language development instruction for each EL and that dual identified special education-ELs are not receiving instruction from properly authorized⁴ teachers.

The second finding was that unspecified "evidence" indicated an "insufficient⁵ number of qualified teachers" have been assigned to provide access to core curriculum instruction to ELs and that dual identified special education-ELs are not receiving access to the core curriculum from properly authorized teachers.

The CDE "Notification of Findings" did not specify any statute or regulation as the basis for any of the asserted violations.

Suanna Gilman-Ponce has been the District's Director of Multilingual Education for five years. She previously was a CDE Comite consultant with responsibility for monitoring districts, and is aware of districts that had resolved issues and then later became non-compliant. Ms. Gilman-Ponce drafted the District's responses to CDE including the Plan to Resolve Non-compliant Findings which was approved by CDE. In January 2003 CDE found that the District was in compliance.

16. The District's "Master Plan and Procedural Handbook for English Learner Programs" which was approved by the Board on February 4, 2002, provides that each EL "receives a program of instruction in English language development in order to develop proficiency in English as rapidly and as effectively as possible." [Exhibit L, p. 26]

17. Ms. Gilman-Ponce testified that an unspecified federal law requires the teacher have, or be in training⁶ for, a CLAD or equivalent credential that if there is even one EL in a core curriculum class. The "core curriculum" means mathematics, science, social science, language arts and English language development classes which are either a required part of the elementary/middle school curriculum or required for high school graduation. Art, music, and physical education are not core curriculum classes, and those teachers are not required to have specific authorization to teach ELs.

18. The State Commission on Teacher Credentialing (CTC) issues credentials and certificates, some of which require passing an examination administered by CTC and the remainder of which are issued after completion of specified courses. A Bilingual Cross-

⁴ The difference, if any, between a "qualified" and a "properly authorized" teacher was not identified.

⁵ The difference, if any, between an "inadequate" and an "insufficient" number of teachers was not identified or enumerated.

⁶ Ms. Gilman-Ponce testified that "in training" means preparing for the CLAD examination or taking coursework for a CLAD or equivalent credential. Generally a teacher may be in training five years for a BCLAD credential and two years for a CLAD or equivalent credential.

cultural, Language and Academic Development (BCLAD⁷) credential or a multiple or single subject credential with a BCLAD Emphasis credential authorize instruction for primary language development and content instruction in a student's primary language. Both require passing an examination.

Those two types of credentials, or a Cross-cultural, Language and Academic Development (CLAD) credential, or a Language Development Specialist (LDS) certificate, or a Bilingual Certificate of Competence, or a Certificate of Completion of Staff Development (SB 395 or SB 1969) authorize teachers to provide English Language Development instruction and Specially Designed Academic Instruction in English to ELs. Teachers who already hold an instructional credential can add a CLAD certificate by completing additional course work or passing a CTC test, for which there are preparation courses.

The CSUS Department of Education offered a three-semester "Sacramento Area Language and Academic Development" (SALAD) course which began in the fall of 2003 and will end May 14, 2004. Successful completion of the course qualifies a teacher for a CLAD credential without examination. Respondents Estrada-Stetson, McNary, Milton, and Zahniser are enrolled in the course.

The University of San Diego (USD) offers a CLAD certificate course which permits teachers to complete training on-line, or by videotape or audiotape. The University of California at Davis Extension and National University also offer CLAD certificate courses.

The District's Multilingual Department provided an opportunity for teachers with nine years of multiple subject teaching experience to obtain a SB 395 Certificate of Completion of Staff Development through courses offered at Burbank High School. One such course started February 27 and will conclude on May 14, 2004, and another began on April 12, 2004. Respondents James, Laguana, Susan Lee, Pike, Reyes, and Uzelac are enrolled in the latter course. The waiting list for future courses includes respondents Biederman, Carboni, D'Angelo, Hornsby, James, Martinez, and Sakikawa.

District teachers can also enroll in the SB 395 Certificate of Completion of Staff Development course offered at the San Joaquin County Office of Education (COE). That course consists of approximately 45 class hours and completion of an acceptable portfolio of work.

19. By his letter of March 5, 2003, Ted Tukloff, the previous Chief Personnel Officer, advised all certificated staff that teachers assigned to provide ELD and SDAIE instruction to ELs must hold a CLAD, BCLAD, SB 1969, LDS, or BCC credential; or be in training for such a credential; or be registered to take the CLAD or BCLAD examination

⁷ In 1992 the Legislature directed the Commission on Teacher Credentialing to issue certificates authorizing the holders to provide certain services to limited-English proficient pupils. Education Code section 44253.1 *et seq.*

before June 30, 2003. The letter advised that the District established a two year timeline for its teachers to complete the requirement.

Mr. Tukloff's letter advised certificated staff of the availability of San Joaquin COE SB 395 training, the SALAD training at CSUS, and that National University and other providers had courses leading to the required credentials.

Mr. Tukloff's letter included a form on which certificated employees were to state if they were currently enrolled in or registered to begin a CLAD course, or registered to take the CLAD examination. No response was received from 110 certificated employees, including respondents Hornsby, James, Kane, Newton, Reyes, Ted Richardson, Riffel, Watters, and Wortman.

20. On June 5, 2003, Ms. Mignone⁸ sent letters to certificated staff as a follow-up to Mr. Tukloff's letter; three versions tailored to the teachers' status were used. Employees who had supplied information that they would have a CLAD or equivalent authorization by June 2003 were directed to take their transcripts to CTC to apply for the credential and provide the CTC receipt to Terri Lauzon, Credential Specialist, at Personnel Services.

Employees who had not responded to Mr. Tukloff's letter were directed to provide information by June 17 to Ms. Lauzon about whether they had made arrangements to work toward an authorization. They were advised that information about available programs was available through Pam Tureen in the Multilingual Department.

Employees who had responded to the Tukloff letter, but had not indicated the date they anticipated completing the CLAD requirement, were directed to indicate the estimated date of completion on the document and return it to Ms. Lauzon by mail or fax.

21. On December 2, 2003, Ms. Mignone wrote to all certificated staff that in March 2003 they had been informed that within two years they would need an authorization to teach ELs to remain in their current teaching assignments. She directed teachers who had completed the necessary coursework to take their transcripts to CTC to apply for the credential and provide a receipt to Ms. Lauzon by December 16, 2003. Ms. Mignone's letter further stated that:

If you have not completed steps to secure the CLAD Certificate or equivalent by June 30, 2004, you will not be eligible to teach in any assignment that requires this certificate and will need to be reassigned. If there are not positions available that do not required the CLAD or equivalent, it may be necessary for the district to terminate your employment.

22. On December 16, 2003, Ms. Mignone wrote to all certificated staff assigned to teach in the core curriculum to ELs. Her letter stated that all teachers assigned to provide

⁸ After Mr. Tukloff's retirement Ms. Mignone was appointed Interim Chief Personnel Officer.

ELD and SDAIE instruction to ELs are required to hold a CLAD, BCLAD, SB 1969, LDS, or BCC credential; or be in training approved by the CTC for such a credential; or be registered to take the CLAD or BCLAD examination before June 30, 2003. The letter advised that the District established a two year timeline for its teachers to complete the CLAD requirement.

The letter advised teachers of the availability of courses in Sacramento through the San Joaquin COE, including preparation courses for the CLAD and BCLAD examinations, and through National University and SCUS. Ms. Mignone's letter included a form on which certificated employees were to state if they were currently enrolled in or registered to begin a CLAD course, or were registered to take the examination.

23. The District maintains a Seniority List which identifies certificated employees' seniority dates (first date of paid service⁹), current assignments and locations, credentials and authorizations, and a permanency indicator.

In June 2003 Personnel Services completed a thorough verification of the Seniority List data including checking the credential(s), seniority date, etc., for each employee. Employees' CLAD or equivalent status was verified by Ms. Lauzon from District records and information received in response to Ms. Mignone's letters. Ms. Lauzon has since regularly updated the Seniority List to reflect changes in employee credentials.

24. There are ELs at every school site, although not all teachers have such students. Approximately 1,760 of the District's 2,020 teachers assigned to teach in the core curriculum have a CLAD or equivalent credential, and an additional 250 or so teachers are in training. Approximately 700 of the District's teachers have no ELs in their classes. Eighty of the district's elementary teachers do not have a CLAD credential or equivalent.

25. As part of its implementation of the Master Plan each September the Multilingual Department identifies ELs¹⁰ at all sites and provides that information to Personnel Services. Personnel Services checks that teachers assigned to ELs in self-contained classrooms or core curriculum subjects have one of the credentials which permit teaching such students.

In September 2003 the Multilingual Department found that a couple schools, including Hiram Johnson High School, had assigned ELs to teachers who did not hold a credential or were not in training. Steps were taken including reassigning ELs and notifying teachers that they had to commence CLAD training.

⁹ Seniority generally is measured from the first date on which the employee rendered service as a probationary employee. Education Code section 44845.

¹⁰ The District's population of 16,900 English Learner (EL) students, approximately 30% of the census, speaks about 49 languages. The largest EL group speaks Spanish as a primary language, followed by Hmong, Mien, Cantonese, Vietnamese, and Russian. In excess of 1,000 students speak each of the listed languages.

Other than designated bilingual classes which are taught by teachers with BCLAD credentials, the District does not know at present which teachers will have ELs in the 2004-05 School Year. Ms. Gilman-Ponce acknowledged that the District will remain in compliance if it continues to assign teachers in training and those with CLAD or equivalent credentials to teach ELs. In the current year the District had enough teachers in training or credentialed to provide the necessary services for its ELs, and could document that to CDE.

26. Ms. Mignone was responsible for the technical aspects of the layoff of 129.32 FTE certificated employees and implementation of the Board Resolution No. 2342 provision that employees "who have the CLAD requirement shall be given priority in regard to order of termination/reduction." Ms. Mignone understood that the Board's resolution directed laying off senior employees who were in training for a CLAD or equivalent credential and those who had completed course work and/or filed an application with CTC but had not yet received a credential. She described that in fairness to all teachers she had to consider that "either you had it or you did not."

To effect the layoff of 116¹¹ FTE elementary teachers the current elementary teachers who lacked a CLAD or equivalent certificate were identified to receive layoff notices. That process did not yield 116 FTE positions, and the required additional reductions were made by identifying the least senior elementary teachers with CLAD or equivalent certificates. All teachers assigned to elementary schools, including those who did not have any EL students or were not assigned to classroom instruction, were laid off if they lacked a CLAD or equivalent credential. For reasons not identified on the records, teachers of the elementary grades 7 and 8 at middle schools were not subject to layoff but such teachers of those grades at elementary schools were. Music, physical education, and other non-core curriculum teachers at elementary schools were not considered for layoff.

Nine junior elementary teachers who hold special education credentials but do not have CLAD or equivalent credentials were "skipped," or omitted from layoff. The District has difficulty finding sufficient special education teachers and will assign those nine individuals to special education classes. Ms. Mignone noted that special education is different than other elementary instruction and has no cutoff date by which teachers must obtain a CLAD or equivalent credential.

The reduction of 1.0 FTE middle school teacher did not require a layoff because one position was vacant. The two most junior physical education teachers received layoff notices. The reduction of 0.80 FTE French Teacher and 0.40 FTE nurse positions did not require layoffs of permanent staff. The reduction of 0.73 FTE psychologist was accomplished by not reelecting a temporary employee; no permanent psychologist received a layoff notice. The 3.0 FTE resource teachers who received layoff notices were selected because they did not have CLAD or equivalent credentials.

¹¹ Board Resolution 2342 provided for a reduction of 116.44 FTE elementary teachers, but the number was rounded off to 116 FTE elementary teachers.

Respondents who lacked a CLAD or equivalent credential, irrespective of assignment or contact with ELs, were not consider for bumping into positions for which they held credentials. Some of the credentials held by respondents permit teaching in middle schools. Those respondents were not considered for bumping into middle school positions held by less senior teachers even when the junior teacher also lacked a CLAD or equivalent credential. Ms. Mignone testified that "Even if they [senior teachers] were entitled to teach it and the incumbent did not have CLAD ... We were ... not bumping out if they did not have CLAD."

Ms. Mignone acknowledged she thought Resolution No. 2342 directed the layoff of any elementary teacher who did not have a CLAD or equivalent credential even if they were in training, which permits teaching ELs. She did not investigate if such senior teachers could be assigned to classes or sites without ELs.

27. Respondent Bobby Jo Anderson's seniority date is September 4, 2001, and she holds a preliminary multiple subjects (K-8) credential and a preliminary single subject English (grades 7-12) credential. She taught ELs last year and in the current school year in her sixth grade class at Elder Creek School. In 2003 her principal advised that a CLAD credential was required.

Ms. Anderson completed the CLAD course in December 2003. She gave a transcript to her principal but did not notify Personnel Services. Ms. Anderson's CLAD application was not filed with CTC until March 11, 2004. She testified that she did not see the part of the Personnel Services letter which directed her to provide notification of her application.

Ms. Anderson was very surprised to be laid off because the December 2003 letter indicated she had till June 2004 to obtain the credential. Ms. Anderson acknowledged that in December 2003 she did not anticipate a layoff, and if she had known a CLAD certificate was a condition of employment she would have obtained it earlier. Ms. Anderson questioned why she was not bumped into English because she previously was bumped from her eighth grade English assignment to sixth grade.

28. Respondent Betty June Biederman's seniority date is September 6, 1983, and she holds a life standard elementary (K-9) with an authorization in Sociology issued in 1979. Ms. Biederman teaches first grade at Peter Burnett, an elementary school with a substantial percentage of EL students. She uses her fluent Cantonese daily with two students.

In 1995 Ms. Biederman started the LDS program but did not complete it due to family illnesses. On March 24, 2003, she stated on the form portion of Mr. Tukloff's letter that she was enrolled in the University of San Diego (USD) CLAD course. She did not complete that on-line course because of her husband's work schedule. In 2003 she responded to Mr. Tukloff's letter that she would complete her CLAD certificate in 2005. In 2003 she completed one class at UCD Extension. She is currently enrolled in the San Joaquin COE

SB 395 program; classes will end on May 24 and a required portfolio is due in November. She claimed she was not told she had to complete the CLAD more quickly.

29. Respondent Ranu Bhatt's seniority date is September 5, 2000, and she holds a preliminary multiple subjects (K-8) credential. She is assigned to John Bidwell Elementary School.

Ms. Bhatt has passed two sections of the CLAD test and will be taking the remaining section in May 2004. She was told as an undergraduate to wait until she was teaching to obtain the CLAD certificate, and would have moved more quickly if she had known that it would be considered in the layoff action.

30. Respondent Ingrid Brosas' seniority date is September 4, 2001, and she holds a preliminary multiple subjects (K-8) credential. She is assigned to Pacific Elementary School where more than 70% of students are ELs. Ms. Brosas taught ELs last year, and 18 of her 19 second graders this year are ELs.

Ms. Brosas was told when she was hired that she needed to obtain a CLAD. As an undergraduate Ms. Brosas took CLAD classes but decided to take the test rather than finish the course. She believed that she had until July 2003, a year after the date of her preliminary credential, to take the CLAD test.

Kathleen Kingsbury is the principal of Pacific Elementary School. Because her site is heavily impacted and had many new teachers she reminds all teachers at the beginning of the year that they need to obtain CLAD certificates. Principal Kingsbury assigned ELs to Ms. Brosas because she is in training for a CLAD certificate.

On November 18, 2002, Principal Kingsbury e-mailed Ms. Lauzon that Ms. Brosas was working on her CLAD but needed a couple more classes, and asked if she was "in danger of losing her job if she is in the midst of completing her CLAD?" Ms. Lauzon replied: "No danger. We can always apply for an Emergency Clad (sic) in the interim." Principal Kingsbury described Ms. Brosas as concerned about requirements because she is quite conscientious. After Ms. Brosas received a layoff notice Ms. Lauzon said the Board's resolution supercedes the information provided in her e-mail.

Ms. Brosas received two "A"s and an "A-" in the CLAD classes she took at CSUS, and she is currently taking the final class in a USD correspondence course. If she had known of the layoff she would have finished the CLAD course or taken the test earlier.

31. Respondent Vienna Marie Bustos' seniority date is September 4, 1990, and she holds a professional clear multiple subjects (K-8) credential. She has one EL in her fourth grade class at the K-8 Leonardo Da Vinci School, which has fewer than 30 ELs presently enrolled.

Last year the principal told all teachers to enroll in CLAD training. Ms. Bustos attended a SB 395 training course in July, and her portfolio was approved December 26, 2003. She advised the principal that she completed the class, but did not apply for the credential until March 2004 because she had not budgeted the \$45 application fee.

Before she received her layoff notice Ms. Bustos sent Personnel Services a copy of the December 26, 2003, San Joaquin COE letter that she had completed the SB 395 requirements. If Ms. Bustos had known of the layoff she would have borrowed the application fee and filed her application earlier.

32. Respondent Mary Lee Carboni's seniority date is August 3, 1990, and she holds a life standard elementary (K-9) credential and an Art/Fine Arts authorization which permits her to teach departmentalized art classes to grades K-9. She teaches 7th and 8th graders in a position which is .60 FTE art and .40 FTE language arts. Ms. Carboni agreed to teach the latter classes at her principal's request for limited time due to available federal class size reduction funding for students each who special assistance with language arts. She has ELs in her art and language arts classes at Leonardo Da Vinci.

Principal Willoughby advised Ms. Carboni she needed a CLAD certificate to teach language arts. In 2003 she began the certification course and was notified of her "A" in the second course on April 2, 2004. When she received a layoff notice she immediately signed up for the remaining classes through USD and expects to complete them in May 2004.

On March 17, 2004, Ms. Lauzon advised Ms. Carboni that she did not need a CLAD certificate to teach art and that the Multilingual Department does not list art as a subject for which that certification is required. Ms. Carboni noted that she has worked for 14 years as a .60 FTE art teacher and is only teaching language arts only temporarily at her principal's request. She was not retained in any portion of her position because she does not have a CLAD or equivalent credential.

33. Respondent Scott Chapman's seniority date is October 30, 2000, and he holds a preliminary multiple subjects (K-8) credential. He is teaching ELs at Edward Kimball, a K-3 school. In the spring of 2003 his principal advised Mr. Chapman that if he had ELs he must be working toward a CLAD certificate and he received Ms. Mignone's letters with the same information.

In November 2003 Mr. Chapman commenced CLAD training through UC Davis Extension. He is taking the final fourth class through USD and expects to finish in mid-June 2004. He testified that he telephoned Ms. Lauzon in January 2004 to ask for an extension to 2005 and written confirmation to give to his principal "to cover" himself. On February 12, 2004, Ms. Lauzon sent Principal Gloria Bandy an e-mail that "Scott has until 3/05 to complete his CLAD requirements." Mr. Chapman was surprised and unhappy when he received a layoff notice, and called Ms. Lauzon who said the Board's resolution superceded the prior information.

Mr. Chapman relied on Ms. Lauzon's email and but for it he would have gotten a CLAD certificate more quickly. He testified that he "thinks" the District knows of his supplementary authorization for 7th and 8th grade English although he has never filed that credential with the District. The District records do not reflect such a credential. No evidence suggested that Personnel Services amends its official records without proper documentation.

34. Respondent Gary Corbett's seniority date is September 8, 1970, and he holds a life standard elementary (K-9) credential with authorizations in History and Political Science, and a life standard secondary (grades 7-12). He is currently teaching at Isadore Cohen, a less impacted school, and has three EL students.

Mr. Corbett received Ms. Mignone's December 3, 2003, letter regarding the need for a CLAD certificate, and completed three USD videotape courses in the summer of 2003. The final class, held in December 2003, required a paper which Mr. Corbett intended to complete in June 2004. After receiving his layoff notice Mr. Corbett immediately completed the paper, which was in rough draft form. Although the USD letter directed that he take his transcript to CTC, he did not do so but came to Personnel Services which provided the application form. He returned it on April 3 and Personnel Services forwarded it to the CTC. His clear CLAD certificate (Preschool-Adult) was issued on April 2, 2004.

Mr. Corbett testified that he feels "betrayed" by the District and if he had been notified in February he would have secured his CLAD certificate by March 15. Mr. Corbett did not anticipate that the District would lay off teachers in March 2004. Mr. Corbett was not bumped into any vacant history or political science position because he did not have a CLAD credential filed by March 15.

35. Respondent Rebecca Cunningham's seniority date is September 5, 2000, and she holds a preliminary multiple subjects (K-8) credential. She is a first grade teacher at Pacific Elementary and 14 of her 20 students are ELs.

Ms. Cunningham received the Ms. Mignone's December 2003 letter that she would need a CLAD certificate within two years of March 2003. She took and passed the CLAD test in May 2003, and sent her scores to Principal Kingsbury and Ms. Lauzon. Ms. Cunningham testified she thought that was all she had to do, despite the specific instruction in the December 2003 letter to take her transcript to CTC and provide the District with a receipt.

In approximately January 2004 Principal Kingsbury sent her a note regarding applying for the CLAD credential, but Ms. Cunningham did not contact Ms. Lauzon until the beginning of March. Ms. Lauzon sent the application form which Ms. Cunningham filled out on March 10, and turned in a week later. Ms. Cunningham testified that she was not warned that she would be laid off, and she "would have moved a lot faster" if such a warning had been provided.

Ms. Cunningham obtained a clear CLAD certificate (Preschool-Adult) on March 17, 2004. She received a layoff notice because she did not secure a CLAD certificate by March 15.

36. Respondent Jeanne D'Angelo's seniority date is October 16, 1973, and she hold a life standard elementary (K-9) credential. She has taught primary grades at Genevieve Didion School since 1976, and did not have any EL students last year or this year. She testified that she relied on never having been told she needed to secure CLAD credential. Ms. D'Angelo's testimony that she never received any communication from the District regarding the need for a CLAD credential was not credible.

Ms. D'Angelo received a layoff notice because she did not secure a CLAD certificate by March 15.

37. Respondent Barbara Edwards's seniority date is September 2, 2003, and she has a preliminary multiple subject CLAD emphasis (preschool-adult) credential. Ms. Edwards received a notice of layoff because she is probationary. She is currently taking classes to obtain a clear credential and needs only one additional course.

38. Respondent Cheri Harris-McCaskill's seniority date is August 31, 1998, and she holds a professional clear multiple subjects (K-8) credential with an authorization in English. She teaches kindergarten at Earl Warren Elementary and has had ELs last year and this year.

In the fall of 2003 Ms. Harris-McCaskill entered the three-semester SALAD program which will end May 14, 2004. She received no warning from the District that if her CLAD certificate was not completed by March 2003 she would be laid off. She received a layoff notice because she did not secure a CLAD credential by March 15.

39. Respondent Mary Hornsby's seniority date is February 7, 1983, and she holds a professional clear multiple subjects (K-8) credential. She currently has one EL in her kindergarten class at Genevieve Didion Elementary School. For a short time in a team teaching assignment during the 2003-04 School Year she had an EL although she was not in training for a CLAD or equivalent credential. She described that at the time her school did not realize team teaching is not permitted in kindergarten. The EL was then reassigned to a kindergarten teacher who holds a LDS certificate.

In the spring of 2003 Ms. Hornsby received a letter from Personnel warning that if she did not have a CLAD certificate ELs could not be assigned to her. Principal Norman Policar told her that because their school has so few ELs she need not worry about letters from the District. Ms. Hornsby testified that she was very upset to get another letter in the fall of 2003 regarding the CLAD requirement.

Principal Policar testified that Genevieve Didion School has only 12 ELs at present and has never had more than 19 EL students. Although the middle school students including

a few ELs see multiple teachers he opined that only the language arts teacher needed a CLAD or equivalent credential. He acknowledged that respondent Hernandez, the middle school math teacher, teaches ELs but he believes did not need a CLAD or equivalent credential. Principal Policar stated that his opinion was based Ms. Hernandez' predecessor not having such a credential, and that his school "had never been out of compliance and it had never been an issue before."

Principal Policar could not identify the classes in the core curriculum; he defined the core curriculum as "the curriculum that is assigned by the state of California." He reiterated that it remains his opinion that a teacher does not need a CLAD authorization to teach mathematics to ELs in grades 7-8, and that he conveyed that opinion to respondent Hernandez and other respondents. Before meeting with them on March 14, 2003, to express his views he did not confer with the Multilingual Department or otherwise verify his understanding.

40. Respondent Michael Howell's seniority date is September 4, 1990. He holds a professional clear multiple subjects (K-8) credential, a professional clear administration services credential, and a professional clear single subject Business Education (grades 7-12) credential. He teaches at H.W. Harkness. Some ELs were in his fifth grade class last year and the principal advised Mr. Howell that he needed to obtain a CLAD credential and reassigned the ELs. Mr. Howell currently has ELs in his third grade class.

Mr. Howell returned the form in Mr. Tukloff's letter with the information that his CLAD coursework through National University would be completed by June 1, 2004. He completed all the work for the credential on March 27, 2004, and submitted his application to CTC through National University. He obtained a clear CLAD certificate (Preschool-Adult) on March 27, 2004, after receiving a layoff notice.

Mr. Howell received a layoff notice because did not secure the CLAD requirement by March 15, 2004. He was not considered for a Business Education position although he is credentialed to teach such courses because senior employees were not bumped if they did not have a CLAD certificate.

41. Respondent Mark James' seniority date is January 29, 1990, and he holds a professional clear multiple subjects (K-8) credential. He is an elementary teacher at Mark Twain School.

Mr. James enrolled in the first SB 395 course offered at Burbank High School which will conclude in May 2004. He received a layoff notice because did not secure the CLAD requirement by March 15, 2004, and was not considered for bumping because he does not have a CLAD certificate.

42. Respondent Maria De Los Reyes Johnson's seniority date is February 23, 2004, and she holds a preliminary multiple subject CLAD emphasis (K-8) credential and an emergency 30-day substitute permit which will expire on July 1, 2004. Under the latter

permit she worked as a substitute during the 2003-04 School Year. She is assigned as a first year probationary teacher at C.P. Huntington Elementary School, where 12 of her 19 students are ELs.

Ms. Johnson completed the training session for administering and scoring the California English Language Development Test in June 2003. Although she has a CLAD certificate Ms. Johnson received notice because of her February 23, 2004, seniority date.

43. Respondent Beatrice Laguana's seniority date is September 6, 1988, and she holds a professional clear single subject physical education (preschool-adult) credential, and a professional clear multiple subjects (preschool-adult) credential. Ms. Laguana taught ELs before her September 2002-April 2003 leave of absence, and she has ELs in her current assignment at Hollywood Park Elementary School.

Resource teacher Lynn Teron advised Ms. Laguana that she needed a CLAD credential and in December 2003 she enrolled in the USD on-line CLAD course. She is currently enrolled in the SB 395 class at Burbank High School; it will conclude in May and she has until November to turn in an acceptable portfolio. Ms. Laguana was not warned she would be laid off if she did not secure a CLAD credential by March 15, and would have taken steps to obtain a CLAD credential sooner if she had known of the layoffs.

Ms. Laguana was not bumped into the physical education classes at the middle or high school which she is credentialed to teach because she does not have a CLAD certificate.

44. Respondent Susan Linda Lee's seniority date is August 5, 1994, and she holds a life standard credential (K-9) with a Social Science authorization. She is assigned to second grade at C.P. Huntington School and had 7 ELs last year and 8 ELs this year.

Ms. Lee denied receiving any written notifications, but acknowledged that last school year her principal told her a CLAD credential was required because she had ELs. She sent away for the USD videotape course but thought it was inappropriate for her because there was no interaction. She signed up for the July 2003 San Joaquin COE course but was ineligible because her job-sharing resulted in less than nine full-time years of teaching. Ms. Lee described that she was "distraught" because she had made time during the summer for the course. She called Ms. Mignone who said to not worry because the CLAD credential was not required until September 2005. Neither Ms. Lee nor Ms. Mignone knew that there would be a layoff.

Ms. Lee received notice because she did not secure a CLAD certificate by March 15, and was not considered for bumping into other assignments because she did not have a CLAD certificate.

45. Respondent Tiffany Lee's seniority date is September 2, 2003, and she has a preliminary multiple subjects (K-8) credential with an authorization in English. Although she was advised of the CLAD requirement during new teacher orientation, and knew she had

a clear CLAD (Preschool-Adult) certificate, she did not provide it to Personnel Services before March 15. She is a first year probationary kindergarten teacher at Pony Express School with one EL student.

Ms. Lee's seniority date is September 2, 2003, and based on her seniority she would not have been retained even if her CLAD certificate had been provided to Personnel Services March 15.

46. Respondent Wendy Martinez' seniority date is September 4, 1990, and she holds a professional clear multiple subjects (K-8) credential. Ms. Martinez is assigned to Genevieve Didion Elementary, a K-8 school with only 11 ELs this year.

Ms. Martinez testified that she did nothing to obtain a CLAD certificate because she had no ELs this year or last year. Her testimony that she never received notice that a CLAD or equivalent credential is required to teach ELs was not credible.

After receiving the layoff notice Ms. Martinez applied for the SB 395 courses offered through the San Joaquin COE and through the Multilingual Department. She had not received confirmation that she has been accepted in either course.

47. Respondent Linda Mellor's seniority date is October 12, 1987, and she holds a professional clear multiple subjects (K-8) credential with authorizations in English and a professional clear single subject (grades 7-12) Government credential. She has filed an application for a reading specialist credential, but it has not as yet been issued. She described that for the last six years she has been employed as a "reading coach" at Genevieve Didion School. The District does not have such a classification "reading coach;" she is employed as a teacher.

Ms. Mellor opined that a CLAD is not necessary for her job. She claimed to not remember any District written communications regarding a CLAD requirement, but admitted she would have ignored a letter about 2005 deadlines because she is retiring next year. After March 15 Ms. Mellor enrolled in the USC videotape program, but does not know when she will obtain a CLAD certificate.

Ms. Mellor received a layoff notice because she did not secure a CLAD certificate by March 15. She was not considered for teaching the core subjects of English and Government, which are within her credential, because she does not have a CLAD credential.

48. Respondent Roswitha Mueller's seniority date is September 3, 2002, and she holds a professional clear single subject (grades 7-12) German language credential, and a professional clear multiple subjects (preschool-adult) credential. Ms. Mueller has ELs in her third grade class Tahoe Elementary, and taught ELs in Spanish and German classes at Sacramento High. She was bumped from that position to her current assignment.

Since receiving a layoff notice Ms. Mueller tried to sign up for a SB 395 course but is ineligible because she lacks nine years of multiple subject teaching. She has signed up for the USD videotape course which costs \$1,080, and has since learned of a preparation class for the CLAD test. She believes her extensive experience teaching foreign language will enable her to pass the test.

Ms. Mueller received notice because she did not secure a CLAD certificate by March 15. Although she is certificated to teach German and Spanish, which are language arts and core academic subjects required for graduation for some students, she was not considered for bumping because she does not have a CLAD certificate.

49. Respondent Wendy Money's seniority date is September 2, 2003. She holds a life standard early childhood (preschool-3) credential, and a life standard elementary (K-9) credential. Ms. Money currently has 10 ELs at Woodbine Elementary, and was advised by her principal that she could teach them because she was in training for her CLAD.

Ms. Money was a District teacher from 1984-96, and knew when she returned to employment that a CLAD certificate was necessary in California these days. In July 2003 she began the USD videotape course, and in January advised her principal Lynn Soto that she completed the course work. She submitted her application to CTC on February 9, 2004, and obtained a clear CLAD certificate (preschool-adult) on February 9, 2004. She did not file her certificate with Personnel Services.

Ms. Money received notice because she did not have a CLAD certificate on file by March 15. She was not considered for bumping for the same reason.

50. Respondent Cynthia Newton-Nedich's seniority date is September 3, 2002. She holds a preliminary multiple subjects (K-8) credential with supplementary authorizations in English, mathematics and general science. Ms. Newton-Nedich teaches at Ethel Phillips Elementary and has 12-13 ELs this year. She previously taught corrective reading and math 76 in departmentalized classes in the junior high program at Martin Luther King School, and was assigned fewer than 12 ELs.

Ms. Newton-Nedich completed three of the required CLAD classes as an undergraduate and believed from she had five years to obtain a CLAD certificate. The basis of her belief was not identified, especially because she acknowledged receiving Ms. Mignone's June 2003 letter. Ms. Newton-Nedich passed the CLAD test in December 2003 and told her principal, but did not apply for the credential until April 1, 2004 because she was busy. She obtained a clear CLAD certificate (preschool-adult) on April 1, 2004.

After June 2003 Ms. Newton-Nedich spoke to Ms. Lauzon about the CLAD requirement. At the time neither of them was aware that there would be future layoffs. Ms. Newton-Nedich was surprised to be laid off because she is a second year probationary teacher and passed her final evaluations.

51. Respondent Carla Otoya-Hart's seniority date is October 16, 1987, and she holds a professional clear multiple subjects (preschool-adult) credential. Since October 1999 she has been a bilingual [Spanish] resource teacher at Mark Twain Elementary School where her job involves Title 1 testing, communications with parents, etc. She teaches on a pull-out basis, which she described as helping individual students with independent reading levels when their class comes to the library.

Ms. Otoya-Hart could not recall any District communications regarding CLAD requirements, but admitted her prior and current administrators told her to obtain the certificate. In 1996 she took two National University CLAD classes and completed a Spanish class the following summer. She did not complete the course. In 2002 she purchased the USD tape course but was not pleased with the quality and "did not feel any urgency" because as a resource teacher she had no assigned students.

After receiving a layoff notice Ms. Otoya-Hart enrolled in the SB 395 course and expects to obtain a CLAD certificate in the summer of 2004. She testified that if she had known of the consequences she would have moved more quickly toward the CLAD credential.

Ms. Otoya-Hart received a layoff notice because she did not secure a CLAD credential by March 15. Despite her significant seniority she was not considered for bumping into a position in which she could use her multiple subjects credential because she does not have a CLAD credential.

52. Respondent Matthew Pesci's seniority date is September 2, 2003, and he holds preliminary single subject (preschool-adult) credentials in physical education and health science. He is one of eleven teachers assigned to New Technology, a charter high school of about 250 9th and 10th grade students. He teaches health on Mondays and PE the rest of the week and has ELs in his classes.

When hired in June 2003 Mr. Pesci was taking one USD videotape CLAD course, and he plans to take the remaining three classes this summer. Mr. Pesci denied receiving any related communications from Personnel Services. In fact he received Ms. Mignone's November 20, 2003, memorandum regarding CLAD certification and wrote on the form that he was enrolled in the USD course and would complete it by September 2004.

Mr. Pesci testified that during training in Napa last July and again in March 2004 the principal said they would be safe from layoff because of the small schools agreement. The "Small High School Dependent Charter Agreement For Identified Schools," an addendum to the collective bargaining agreement, does not insulate certificated employees of charter schools from layoff. In Part C it provides that except as specified all provisions of the Education Code shall apply. Part E states that teachers will not be required to work at the charter schools, that surplus teachers will be accorded consideration but may not select a charter school, and that District schools are not required to accept surplussed charter school teachers.

Mr. Pesci did not secure the CLAD certificate by March 15, but would have been laid off even with that credential because of his September 2, 2003, seniority date.

53. Respondent Geoffrey Pike's seniority date is January 9, 1990, and he holds a professional clear multiple subjects (K-8) credential with an authorization in Music and a clear supplementary (preschool-adult) authorization in Music. He taught fifth grade for seven years, and now teaches drums, piano and recorder to grades 4, 5, and 6 at Peter Burnett School.

In 1994 Mr. Pike took a CLAD credential course and he finished the required language class in 1996. His testimony that he thought attending the course was all he had to do, and that he did not have to apply to CTC for the CLAD credential, was not credible. He acknowledged that he had to submit applications for his teaching credential and its renewals, and that attending courses was not sufficient. He has not completed enough classes to obtain a CLAD credential.

Mr. Pike testified that no one told him that a CLAD credential was required to teach music or that he would be laid off without such a credential. Mr. Pike acknowledged that no resource teachers who are junior to him are being retained.

54. Respondent Elizabeth Reyes' seniority date is September 6, 1983, and she holds a life standard elementary (K-9) credential with an authorization in sociology. She has five ELs in her third grade class at Mark Twain Elementary School and had about the same number last year.

In April 2003 Ms. Reyes was accepted in the SALAD program at CSUS but she did not complete it due to family medical problems. At a March 4, 2004, school staff meeting she heard about the SB 395 program which started at Burbank High School on February 27. She was allowed to enter late on March 29 and will be required to submit an acceptable portfolio after the class concludes in May. Her effort to blame her principal for her ignorance of the course was not persuasive; the District provided three letters regarding the availability of SB 395 courses and information was posted at school sites.

Ms. Reyes received a layoff notice because she did not secure the CLAD requirement by March 15. Despite her significant seniority she was not considered for bumping into another position because she does not have a CLAD credential. Her authorization in Sociology is inapplicable because that subject is not currently taught at the District.

55. Respondent Shelly Silveria's seniority date is September 3, 1985, and she holds a professional clear multiple subjects (preschool-adult) credential and a clear pupil personnel services-counseling (preschool-adult) credential. She uses the latter credential in an evening job at Fremont Adult School and in volunteer work with the Family and Assistance Center. She teaches third grade at Pony Express School.

Ms. Silveria interpreted the Ted Tukloff letter to mean that she had until 2005-06 to complete a CLAD credential. She completed a CLAD course on April 7 and obtained a clear CLAD certificate (preschool-adult) on April 14, 2004.

Ms. Silveria was laid off because she did not have a CLAD certificate by March 15. Ms. Silveria has authorizations in other areas and a pupil personnel services credential but was not considered for bumping into such assignments because she did not have a CLAD credential on March 15.

56. Respondent Cheryl Lynn Sims' seniority date is February 2, 2004, and she holds a preliminary multiple subjects (K-9) credential. Ms. Sims is assigned to a second grade class with 3 ELs at David Lubin Elementary School. She is the only African-American teacher there, and opined that with her education, corporate background, and fluency in Spanish she is a good role model.

Ms. Sims applied for her job on line, and acknowledged that the District's website stated a CLAD credential was required "but you had to scroll down" to see it. If she had paid attention to that statement she could have started on the requirement more quickly, even before she moved to California. On March 30, Ms. Sims received a clear CLAD certificate post-dated to February 2, 2004. Her application for a BCLAD on the basis of her master's degree in Bilingual Education from an Illinois school was denied, apparently because she has not taken the required examination.

Ms. Sims did not secure the CLAD certificate by March 15, but would have been laid off even with that credential because of her seniority date. She has held her teaching position for only 1.5 months.

57. Respondent Sarita Turner's seniority date is October 4, 1984. She holds a professional clear multiple subjects (K-8) credential and a clear pupil personnel services-counseling (grades 7-12) credential. Since 1986 she has been an outreach consultant at Peter Burnett School. She was planning to work a pre-retirement .80 FTE schedule next year as she did this year.

Ms. Turner does not provide instruction in a classroom and testified that she was never told she needed to secure a CLAD credential. After receiving a layoff notice she signed up for a CLAD course which will begin April 29. She testified that she should be reassigned to another resource teacher position, but does not know her seniority in relation to the resource teachers.

Ms. Turner received a layoff notice because she did not secure a CLAD or equivalent credential by March 15. Because she does not have a CLAD credential she was not considered for bumping into another certificated position, including positions authorized by her pupil personnel services credential.

58. Respondent Virginia Uzelac's seniority date is September 8, 1969, and she holds a life standard elementary (K-9) credential with a social science authorization. There are ELs in her second grade class at Isadore Cohen School.

Ms. Uzelac admitted she has known for several years that she had to be working on a CLAD credential if she had any ELs. She took no steps to do so because her school has very few ELs and she was "only sometimes" assigned such students. Her claim that she did not know there was any special time limit was not credible. She enrolled in the SB 395 course at Luther Burbank which concludes at the end of May.

Ms. Uzelac received a layoff notice because she did not secure a CLAD certificate by March 15. Her credential permits her to teach social science, a core curriculum subject, but she was not considered for "bumping" because she does not have a CLAD credential and there is no known need for additional social science teachers in the next school year.

59. Respondent Richard Waller's seniority date is October 7, 1985, and he holds a clear multiple subjects (K-8) credential. He is assigned to Leonardo Da Vinci magnet school, which has very few ELs. He had no ELs last school year, but some this year because he was in CLAD training.

After hearing in April 2003 that he needed a CLAD to teach ELs he signed up for the 34-hour SB 395 class held July 19-30, 2003. His portfolio was accepted in December 2003, but he did not submit his application to CTC until February 2004. He did not advise the District that he had completed the class or submitted his application. Mr. Waller testified that if he had known that he would be laid off he would have taken steps to expedite getting the 395 certificate.

60. Respondent Marley A. Watters' seniority date is September 2, 1997, and she holds a preliminary multiple subjects (K-8) credential. She teaches third grade at Elder Creek and 17 of her 20 students are ELs.

After receiving Mr. Tukloff's March 5, 2003, letter Ms. Watters took and failed the CLAD examination in June 2003. She described that the District's communications were "All along it had been are you in progress, are you in progress, and yes I was finding a course." She testified that although Ms. Mignone's letter said she had to finish by June 2004, she did not understand that meant she had to have her CLAD certificate by that date. She thought it was sufficient that she had again taken the test. In light of her past test results her testimony was illogical and not credible.

Ms. Watters is scheduled to take the CLAD examination on May 8. If she had understood that she could be laid off she would have re-taken the CLAD examination in December 2003. She complained that in the "many inservices" she attends the District failed to advise her of the consequences of not having a CLAD certificate. In light of her failure to respond to Mr. Tukloff's letter, and the numerous letters from Personnel Services regarding the CLAD or equivalent requirement, her view is not persuasive.

Ms. Watters received a layoff notice because she did not secure a CLAD certificate by March 15. She was not considered for "bumping" because she does not have a CLAD credential.

61. Respondent Linda Wortman's seniority date is August 31, 1998, and she holds a professional clear multiple subjects (K-8) credential. While in training this year for a CLAD certificate she taught ELs in her third grade class at Pony Express School.

Ms. Wortman thought Ms. Mignone's December 2, 2003, meant she had until 2005 to obtain a CLAD certificate. In fact the letter stated that if she did not have one by June 30, 2004, she would not be eligible to teach in assignments for which it is required and absent such positions could be terminated. She completed the USD CLAD course on March 28, and submitted her application to CTC on April 15, 2004. She would have obtained it earlier if she had known she would be laid off.

Ms. Wortman was laid off and was not considered for bumping into other positions because she did not secure a CLAD credential by March 15.

62. Respondents Harris-McCaskill, Estrada-Stetson, McNary, Milton, and Zahniser stipulated that they each have been assigned ELs last year and in the current year. They each took a CLAD course based on the understanding that such certification was required and they could teach ELs while in training. They relied upon the District's informing them of the SALAD program and would have completed a faster course if they had known that lacking a CLAD or equivalent certification would result in receiving layoff notices.

63. Respondents Cluff, Cochran, Gilbert, Kane, Riffel, Laney, and Howell stipulated that they relied upon the statement in the March 5, 2003, Tukloff letter that the District established a two year timeline for its teachers to complete the CLAD or equivalent requirement or the similar letters of Ms. Mignone.

64. Respondents Cluff, Cochran, Franzoni, Gilbert, Howell, Kane, Lacey, Riffel, and Watters stipulated that they are permanent elementary teachers who would have speeded up their respective plans to secure a CLAD or equivalent credential if they had known they would receive layoff notices. They each expect to obtain a CLAD or equivalent credential by 2005.

65. Respondents Estrada-Stetson, McNary, Milton, and Zahniser stipulated that they received notice because their CLAD credentials were not on file by March 15.

66. Respondents Richardson and Sekikawa stipulated that they are on the waiting list for the Multilingual Department's SB 395 course, and would have enrolled earlier if they had known of the consequences of not having a CLAD or equivalent credential by March 15.

67. Teachers who have completed the CLAD or equivalent course and filed their application with CTC can request an emergency CLAD credential from the County Office of Education. Because of the limited time available to implement the Board's resolutions by the March 15 deadline Personnel Services did not instruct respondents in that situation to request emergency credentials.

68. The District considered known vacant positions for the 2004-05 School Year due to non-reelection of temporary employees, resignations, retirements, and employees requesting leave. Ms. Mignone described that most of the known retirements involved high school teachers.

LEGAL CONCLUSIONS

1. Education Code sections 44949 and 44955 establish jurisdiction for the subject proceeding. The notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met.

2. The "elementary teaching" services identified in the Board Resolution No. 2342, are particular kinds of services which can be reduced or discontinued pursuant to Education Code section 44955.

A school 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; California Teachers Association v. Goleta Union School District (1982) 132 Cal.App.3d 32. In the latter case the court held that a reduction of K-6 classes was a reduction of a particular kind of service and the termination of the teachers who provided those services was permitted under section 44955. The court held that "Since high school offerings, such as mathematics, science, history and art, are particular kinds of service, logically elementary grade classes which teach the same offerings, although with a single teacher, are particular kinds of service."

In San Jose Teachers Association v. Allen (1983) 144 Cal.App.3d 627, the school district designated categories of services to be reduced or eliminated, such as Counseling, Categorical Programs, Elementary Instrumental Music Program, Elementary Specialist, Elementary Vocal Music. The court noted that "The number of terminations made necessary by PKS reductions depends totally upon the district's decision as to how many services to reduce" and that a valid reduction in service can be found "as long as there is a change in the method of teaching or in the particular kind of service in teaching a subject." San Jose Teachers Association, supra, 635.

Respondents' argument that consideration of under-enrollment transformed the subject particular kind of services proceeding into an average daily attendance (ADA) layoff was not persuasive. In the latter type of proceeding the number of positions to be reduced is determined by computation of the percentage of decline in ADA during a specific time period. Brough v. Governing Board of the El Segundo Unified School District (1981) 118 Cal. App. 3d 702, 713. In the subject proceeding such a computation was not employed; rather, the District considered the financial consequences of under-enrollment among a number of economic factors. The financial circumstances of a district may be affected by reduced enrollment without converting a particular kind of services layoff into an ADA layoff.

3. The Board's decision to reduce particular kinds of services was not arbitrary or capricious. The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The anticipation of receiving less money for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in San Jose Teachers Assn v. Allen (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction."

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. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

4. The District is not required to consider attrition in layoffs based upon reduction or discontinuance of particular kinds of services. San Jose Teachers Association v. Allen (1983) 144 Cal. App. 3d 627, 636. The requirement that a school district account for positively assured attrition in determining the number of certificated employees to be reduced applies only to ADA layoffs. Lewin v. Board of Trustees (1976) 62 Cal. App. 3d 977, 980.

5. Respondents argue that the District should have notified respondents to obtain emergency CLAD or equivalent credentials to avoid layoff. The argument is without merit. Emergency credentials may be issued only after a school district files with the Commission on Teacher Credentialing a "Declaration of Need for Fully Qualified Educators" and a separate application for an emergency permit for each teacher. Education Code 44300. Emergency permits are valid for one year. Education Code 44251, Title 5, CCR sections 80024.1, 80026, 80026.6. Districts are not obligated to file such declarations and there is no guarantee that a current holder of an emergency credential will receive a renewed emergency credential.

Here it is premature for the District to file such a declaration for the 2004-05 School Year. Moreover, no evidence suggests a factual basis for such a declaration.

6. Respondents argue that Resolution 2346 will have the impact of moving certificated employees currently working as administrators into the Sacramento City Teachers Association unit. The rights of those District administrators are established by the Education Code and cannot be curtailed by the displeasure of the teachers' association.

Certificated administrators are subject to layoff in the same manner as teachers. Hentschke v. Sink (1973) 34 Cal.App.3d 19. With the appropriate credential and seniority an administrator may be entitled to bump into a teaching position. Administrators first hired as teachers retain their original seniority dates, as do those first hired as administrators before July 1, 1983. Education Code section 44956.6.

7. Respondent Howell argues that he should bump less senior instructors who teach Business Education courses in the District's adult school. The contention is without merit. An adult school is a statutorily separate program from a district's regular K-12 program, with a separate tenure track and salary schedule. Pursuant to Education Code section 44929.25, adult school teachers employed 0.60 FTE or less are classified as temporary and do not become probationary or tenured. If an adult school teacher is eligible for tenure in both the adult school and regular school, he or she must choose in which program to be tenured and cannot be tenured in both. Education Code section 44926.26. Service in adult school does not count toward tenure in regular school. Education Code section 44929.26.

Adult school teachers do not have tenure or seniority in regular school and cannot bump into it and regular school teachers do not have tenure or seniority in adult school and cannot bump into it. Rutherford v. Board of Trustees (1976) 64 Cal.App.3d 167; Kamin v. Governing Board (1977) 72 Cal.App.3d 1014.

8. The testimony of Ms. Mignone and Ms. Gilman-Ponce established that the District is motivated to serve the needs of its English Learners and concerned that the CDE may again determine that it is out of compliance. Because the census of ELs is markedly increasing and ELs are found in all schools, the District engaged in the prudent and reasonable effort reflected in Mr. Tukloff's and Ms. Mignone's letters to assure that every teacher has a CLAD or equivalent credential.

However, the extreme measure enunciated in Board Resolution No. 2342 of laying off senior certificated employees who did not have a CLAD or equivalent credential and retaining junior employees who have such a credential violates Education Code section 44955. That section provides in pertinent part:

(b) Whenever in any school year ... a particular kind of service is to be reduced or discontinued ... the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the

provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

...

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. ...

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. ...

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. ...

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, ... and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess. (emphasis supplied).

Education Code section 44955 places an affirmative obligation on the District to reassign senior teachers whose positions are being reduced/discontinued into positions held by junior teachers if they have the credentials and competence to occupy such positions. The only exception to making layoff decisions on the basis of seniority is the narrow circumstance described by subsection (d)(1), where the District "demonstrates a specific need for personnel to teach a specific course or course of study... and that the certificated employee (to be skipped) has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess."

Here the District has identified no "specific course"¹² or course of study¹³ in Resolution 2342. Rather, it resolved to lay off certificated employees who lacked a CLAD or equivalent credential, and skip certificated employees teaching any course in any school holding such authorizations. Such layoffs are proposed across the District's educational offerings, affecting mathematics, language arts, science, art, etc., as well as resource teachers

¹² Education Code section 51015 states: "'Course' means an instructional unit of an area or field of organized knowledge, usually provided on a semester, year, or prescribed length of time basis."

¹³ Education Code section 51014 states: "'Course of study' means the planned content of a series of classes, courses, subjects, studies or related activities."

and other credentialed assignments. Furthermore, the Resolution 2342 was implemented to preclude all senior teachers without CLAD or equivalent credentials from bumping into any assignment within the District, not just a "specific course or course of study." The effect of the District's layoff action is that very senior employees¹⁴ are displaced by junior employees who, in some instances, are distinguishable only because they have completed a 45-hour videotape course. Resolution 2342 is not justified by, or within the parameters of, Education Code section 44955(d)(1).

The court in Alexander v. Board of Trustees (1982) 139 Cal. App. 3d 567, held that such skipping of junior employees violated Education Code section 44955. Alexander concerned a school board's decision to not lay off Spanish-speaking teachers and to consider that ability as a criterion for breaking ties between teachers with the same seniority dates. Although the school district considered that the skipped teachers would fill its language needs, they were not necessarily assigned to its bilingual courses.

As between teachers of equal seniority, the Alexander court acknowledged the propriety of considering language skills as a tie-breaking criterion. The potential advantage of their ability to communicate with Spanish-dominant students would be consistent with the "needs of the district and the students" as that phrase is used in that part of subdivision (b) of Education Code section 44955 that deals with teachers with the same seniority date. Alexander, pg. 573.

However with regard to teachers with different seniority dates, the Alexander court held that the "needs of the district and students" is not a proper measure of priority. Ordinarily, the test is whether the senior employee is certificated and competent to displace the more junior employee. The Alexander court rejected the school district's contention that bilingualism was a proper general criterion for competency. It noted the legislative mandate to provide bilingual education, but added:

Employment of new teachers with bilingual ability and gradual, prospective amendment of job descriptions to include language skills may be a proper means of creating district-wide bilingualism. However, presently employed teachers hired as monolingual teachers, who are otherwise competent, may not be discharged under these conditions merely because more junior employees have achieved passing grades from a committee of bilingual teachers.

In the subject case, the District proposes to do that which Alexander forbade – to discharge otherwise competent teachers who were hired without the requirement of a CLAD or equivalent credential and retain junior teachers who hold such a credential irrespective of whether the junior teachers' assignments require such a credential.

¹⁴ For example, respondents with seniority dates in 1969 (Uzelac), in 1970 (Corbutt), in 1973 (D'Angelo), in 1983 (Biederman, Reyes, Hornsby), in 1984 (Turner), in 1985 (Waller, Silveria), in 1987 (Mellor, Otoy-Hart), in 1988 (Laguana), in 1990 (Pike, Bustos, Martinez, Carboni, Howell, James), etc.

The District contends that Resolution No. 2342 and its implementation is authorized by Education Code section 44955(d)(2) because its purpose is to maintain or achieve compliance with constitutional requirements related to equal protection of the law. That argument is not supported by the evidence, most notably that because they lack a CLAD or equivalent credential senior respondents were not considered for bumping into middle school positions even when the junior teacher also lacked such a credential. Finding 26, above. Moreover, the evidence of Ms. Gilman-Ponce, Ms. Thomas, and Ms. Mignone established that teachers who do not have a CLAD or equivalent credential could teach ELs because they were in training.

The District further argues that if it did not skip teachers with CLAD credentials in preference to teachers who do not possess such credentials, "it would have been compelled to layoff a greater number of CLAD credentialed teachers, thereby aggravating the District's ability to achieve and maintain compliance with federal equal access laws for EL pupils." That argument is not supported by the evidence. The testimony of Ms. Gilman-Ponce, Ms. Thomas, and Ms. Mignone established that the District is in compliance if it has teachers in training teach ELs and that practice will be acceptable in the 2004-05 School Year.

None of the District's generalized references to state and federal law or the citations to 42 U.S.C. § 2000d and Lau, et al. v. Nichols, et al. (1974) 414 U.S. 563, 566, provide authority for the proposed layoff. As noted above, the District's own witnesses testified that the District is in compliance with its current configuration of staff and assignment of ELs to teachers in training. Moreover, Education Code section 44325.10 permits the District to reassign teachers to provide instruction to ELs. The testimony of Ms. Gilman-Ponce established that the District has done so to achieve compliance at Hiram Johnson and other schools.

Finally, the District offers that if it has assignments in the 2004-05 School Year in subject areas which do not require a CLAD, or contemplates assigning a less senior CLAD credentialed teacher to render a service which a more senior non-CLAD teacher on the reemployment list is able to perform, the District shall offer reemployment to the senior teacher. That suggestion does not remedy the violation of the employment rights of senior certificated staff.

9. In light of Legal Conclusion 8, above, it is not necessary to address respondents' argument that the District is estopped from terminating teachers who do not hold a CLAD or equivalent credential.

ORDER

The layoff notices issued pursuant to Board Resolution No. 2342 based solely on seniority are sustained. Notice shall be given to those employees that their services will not be required for the 2004-2004 School Year because of the reduction and discontinuance of particular kinds of services.

The layoff notices issued because certificated staff lacked a CLAD or equivalent credential are rescinded.

Dated: May 7, 2004



M. AMANDA BEHE

Administrative Law Judge

Office of Administrative Hearings