

BEFORE THE
BOARD OF TRUSTEES OF THE
ALTA LOMA SCHOOL DISTRICT

In the Matter of the Accusations Against:

JENNIFER BENNETT,
VICTOR SOLIS,
DANIEL STEVENSON,

Respondents.

OAH No. 2011030126

PROPOSED DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 4, 2011, at the Alta Loma School District in Alta Loma, California.

Rutan & Tucker, LLP, by David C. Larsen, Attorney at Law, represented the Alta Loma School District (District).

Trygstad, Schwab & Trygstad, by Richard J. Schwab, Attorney at Law, represented certificated employees Jennifer Bennett, Victor Solis, and Daniel Stevenson (collectively, Respondents). All Respondents were present at the hearing.

Evidence was received by stipulation, documents, and testimony. The matter was submitted on April 4, 2010.

FACTUAL FINDINGS

1. Michael Whisenand is the Superintendent of the District and filed the Accusation in his official capacity.

2. Respondents are certificated employees of the District. The District is comprised of elementary and junior high schools.

3. On February 24, 2011, the Governing Board of the District, by adoption of Resolution 02-24-11 (Resolution), determined to reduce or discontinue the following particular kinds of services for the 2011-2012 school year, as follows:

<u>Service</u>	<u>FTE¹ Reduction</u>
Grades 1-3 Class Size Reduction	18.0

4. The Governing Board, in the Resolution, directed the Superintendent or his designee to give written notice, prior to March 15, 2011, to the certificated employees who may be laid off in order to reduce the number of certificated positions as proposed in the Resolution. The Governing Board, in the Resolution, also established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date, based on the needs of the District and its students.

5. The Governing Board took action to reduce or discontinue the services set forth in Factual Finding 3 because of the State's on-going budget crisis and the District's need to reduce or discontinue services in order to maintain a balanced budget and provide essential services. The elimination of the Class Size Reduction Program² in grades 1 to 3 would save the District an estimated \$1.173 million. Staffing ratios in those grades would increase to 30 to 1 and result in a reduction of 18 teaching positions.

6. Pursuant to the Resolution, the Superintendent notified the Governing Board of his recommendation that 19 certificated employees, including Respondents, be given notice that their services would not be required for the 2011-2012 school year and stating the reasons for that recommendation.

7. On or before March 15, 2010, the Superintendent notified 19 certificated employees, including Respondents, in writing, of his recommendation that notice be given to them pursuant to Education Code sections 44949 and 44955 that their services would not be required for the 2011-2012 school year. Each written notice set forth the reasons for the recommendation and informed the employee of his or her right to request a hearing.

8. Of the 19 employees served with the March 15 layoff notice, Respondents Bennett, Solis, and Stevenson are the only employees who timely requested a hearing, in writing, to determine if there is cause for not reemploying them for the 2011-2012 school

¹ FTE stands for full-time equivalent.

² The Class Size Reduction Program is governed by Education Code section 52120 et seq. The purpose of the program is "to ensure that children in public school in kindergarten and grades 1 to 3, inclusive, receive instruction in classrooms where there are not more than 20 pupils." (Ed. Code, § 52122.)

year. The other 16 employees who did not request a hearing waived their right to a hearing and cannot contest the recommendation of their non-reemployment by the District. (Ed. Code, § 44949, subd. (b).) The 16 employees who did not request a hearing are: Joni Baker; Sandy Chou; Cynthia Diamond; Matthew Dzama; Joshua Estes; Calli Jo Frei; Janine Gonzales; Kristina Hedlund; Rebecca Kenyon; Jody Kinsey; Meggan Markey; Curtis Quanstrom; Jennifer Rice; Melody Simons; Courtney Tartamella; and Lauren Weischedel.

9. The Superintendent made and filed Accusations against Respondents Bennett, Solis, and Stevenson. The Accusations with required accompanying documents and blank Notices of Defense were timely served on Respondents. A Joint Notice of Defense was timely filed on behalf of Respondents.

10. The District maintains a seniority list which contains employees' seniority date (first date of paid service), employment classification, and credentials and authorizations. The District used the seniority list to identify the least senior employees currently assigned in the particular kinds of services being reduced. The District determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. Respondents Bennett, Stevenson, and Solis have been identified for layoff due to being displaced or "bumped" from their positions by other employees. Respondents are currently teachers at Alta Loma Junior High School.

11. Respondent Jennifer Bennett has a seniority date of August 4, 2010, which she does not dispute. Bennett currently teaches seventh grade pre-Algebra and eighth grade Algebra and Algebra I. She received her single subject credential in foundations math in January 2009. Bennett is certified for Crosscultural, Language and Academic Development (CLAD), and is rated Highly Qualified under No Child Left Behind (NCLB).

12. Respondent Daniel Stevenson has a seniority date of August 4, 2010, which he does not dispute. He currently teaches eighth grade Algebra I. Stevenson holds a single subject credential in math, with a supplemental authorization in business. He is rated Highly Qualified under NCLB, and is English Language certified to teach English language learners.

13. Respondent Victor Solis has a seniority date of August 5, 2009, which he does not dispute. He currently teaches seventh grade life science. He holds a single subject credential in geosciences, which he received in 2006. He is CLAD certified and rated Highly Qualified under NCLB. Solis has six years of teaching experience, consisting of two years at Alta Loma Junior High School and four years at a high school outside the District.

14. Employee Julia Olsen is currently a kindergarten teacher for the District. She has a seniority date of August 31, 1999. She holds a clear multiple subject credential, with a supplemental authorization in math. Based on her credential and supplemental authorization, Olsen is qualified to teach the seventh and eighth grade math classes currently taught by Respondents Bennett and Stevenson.

15. Employee Deborah Markey is currently a fourth grade teacher for the District. She has a seniority date of August 27, 1996. She holds a clear multiple subject credential, with supplemental authorizations in English and math. Based on her credential and supplemental authorizations, Markey is qualified to teach the seventh and eighth grade math classes currently taught by Respondents Bennett and Stevenson.

16. Employee Pamela Boyd is currently a third grade teacher for the District. She has a seniority date of November 1, 1995. She holds a clear multiple subject credential, and a single subject credential in life science. Based on her credentials, Boyd is qualified to teach the seventh grade life science class taught by Respondent Solis.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. (Factual Findings 1-9.)

2. The services identified in Resolution 02-24-11 -- the elimination of the Class Size Reduction Program in grades 1 to 3 -- are particular kinds of services that could be reduced or discontinued under Education Code section 44955. (*Zalac v. Governing Board of the Ferndale Unified School District* (2002) 98 Cal.App.4th 838, 853-854.) A district may reduce services within the meaning of section 44955 by "determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and students within the meaning of Education Code section 44949. (Factual Findings 3-5.) The Governing Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

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

5. The District correctly identified Respondents as employees subject to layoff in accordance with Education Code section 44955. Respondents are subject to layoff because they are being "bumped" from their current positions by other employees based on seniority and qualifications. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

6. Education Code section 44955, subdivision (c), provides, in pertinent part: "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." The District's proposed reassignment of employees Boyd, Olsen, and Markey, respectively, to the positions currently held by Respondents Solis, Bennett, and Stevenson, respectively, is proper, as the reassigned employees have the seniority and qualifications to render the services of those positions.

7. Employees Boyd, Olsen, and Markey, by their credentials, are qualified to render the services of the positions currently held by Respondents. Education Code section 44203, subdivision (d), states: "'Authorization' means the designation that appears on a credential, certificate, or permit that identifies the subjects and circumstances in which the holder of the credential, certificate, or permit may teach, or the services which the holder may render in the public schools of this state."

8. Under California Code of Regulations, title 5, section 80057.5, subdivision (a), the holder of a valid teaching credential may have one or more subjects added as a supplementary authorization upon verified completion of either: (1) 20 semester hours or 10 upper division semester hours of non-remedial collegiate course work in each subject to be listed, or (2) a collegiate major in a subject directly related to each subject to be listed. The subjects that may be added as supplementary authorizations to a valid teaching credential include, but are not limited to, mathematics and science. (Cal. Code Regs., tit. 5, § 80057.5, subd. (c)(10) & (13).) A supplementary authorization in mathematics requires "at least one course in each of the following areas (all course work shall be at least at a level for which intermediate algebra is a prerequisite): algebra, geometry, and development of the real number system or introduction to mathematics; or three courses in calculus or other mathematics courses for which algebra and geometry are prerequisites." ((Cal. Code Regs., tit. 5, § 80057.5, subd. (c)(10).) A supplementary authorization in science requires "at least one course in each of the following areas: biological sciences, chemistry, geosciences, and physics." (Cal. Code Regs., tit. 5, § 80057.5, subd. (c)(13).)

9. Employee Boyd has more seniority than Respondent Solis, and her single subject credential in life science qualifies her to perform the services of the position currently held by Solis. Employees Olsen and Markey each have more seniority than either of Respondents Bennett and Stevenson. Markey and Olsen each hold a supplemental authorization in math, which qualifies them to perform the services of the positions currently held by Bennett and Stevenson. The District's proposed reassignment of employees to the positions currently held by Respondents complies with Education Code section 44955 and, therefore, establishes a basis for subjecting Respondents to layoff.

10. Respondents contend they should not be subject to layoff because they do not perform the elementary school services being reduced or discontinued, and they do not hold multiple subject credentials, which are required for elementary school assignments. (Ed. Code, § 44256, subd. (b).) This contention must fail. Under Education Code section 44955, subdivision (b), when a particular kind of service is to be reduced or discontinued, and the governing board determines it is necessary to decrease the number of permanent employees in the district, the governing board may terminate the services of "not more than a

corresponding percentage of the certificated employees of the district." There is no provision in section 44955 which limits a governing board's authority to terminate employment only of employees who perform the particular kinds of services being reduced or discontinued. Further, the Governing Board, in the Resolution, recognized that "the reduction or elimination of [the particular kinds of] services may result in the reassignment and laying off of certificated employees."

11. Respondents also contend they should not be subject to layoff because the employees to be assigned or reassigned to the positions currently held by Respondents have not been shown to have the requisite competency for the positions. This contention must fail. As discussed above, the employees to be reassigned to Respondents' positions, by virtue of their credentials and supplemental authorizations, are competent to teach those positions. Further, contrary to Respondents' argument, the District is not required to have the employees pass a subject matter competency test, pursuant to Education Code section 44955, subdivision (c). The subject matter competency test under subdivision (c) only applies when a certificated employee is to be assigned or reassigned "to teach a subject which he or she has not previously taught, *and for which he or she does not have a teaching credential*, or which is not within the employee's major area post secondary study or the equivalent thereof." (Emphasis added.) The employees to be reassigned to Respondents' positions have the credentials to teach in those positions.

ORDER

1. Notice may be given to employees occupying 18.0 full-time equivalent certificated positions that their services will not be required for the 2011-2012 school year because of the reduction and discontinuance of particular kinds of services. Such notices may be given to Joni Baker; Jennifer Bennett; Sandy Chou; Cynthia Diamond; Matthew Dzama; Joshua Estes; Calli Jo Frei; Janine Gonzales; Kristina Hedlund; Rebecca Kenyon; Jody Kinsey; Meggan Markey; Curtis Quanstrom; Jennifer Rice; Melody Simons; Victor Solis; Daniel Stevenson; Courtney Tartamella; and Lauren Weischedel.

2. Notice shall be given in inverse order of seniority.

Dated: April ___, 2011

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings