

BEFORE THE
GOVERNING BOARD
SOUTH BAY UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

IN THE MATTER OF THE REDUCTION
IN FORCE ACCUSATIONS AGAINST:

OAH No. 2010020399

KATHY ASHLEY, et. al;
SEE THOSE EMPLOYEES LISTED IN
EXHIBIT B TO THE ACCUSATION WHO
TIMELY REQUESTED A HEARING,

Respondents.

GWENDOLYN GARCIA, et. al;
SEE THOSE EMPLOYEES LISTED IN
EXHIBIT B TO THE ACCUSATION WHO
TIMELY REQUESTED A HEARING,

Precautionary Respondents.

PROPOSED DECISION

On April 28, 2010, in Imperial Beach, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Clifford D. Weiler, Attorney at Law, represented the South Bay Union School District.

Kent Morizawa, Attorney at Law, represented respondents Olga Bajo, Laura Cappadona, Gwendolyn Garcia, Annalicia Guido, Carolina Ruvalcaba, Alexandra Vargas, Patricia Villegas, Irene Camargo, Jose Villegas, Delia Uribe, Teresa Vaca, and Salvador Macias.

Fern M. Steiner, Attorney at Law, represents respondents Kathy Ashler, Laura Davis (Crowe), Andrea Duff, Marc Emmons, Carol Guardiana, Elizabeth Malis, Deborah Mason, Kathleen McKinney-Nokes, Helena Medina, Jenni Meyer, Hilda Mercado, Desiree Million, Karen Parker, Brenda Robles, Liliana Robles, Lisa Powell, Alexandra Smith, Kelly Sullivan, Alfonso Sumaya, Jr., and Michele Syverson.

Jacqueline Padilla and Beverly Gonzalez represented themselves.

The matter was submitted on April 28, 2010.

FACTUAL FINDINGS

1. On or about April 5, 2010, Kim Phifer, Assistant Superintendent, Human Resources, South Bay Union School District (hereafter, "the District"), made and filed the accusations against respondents in her official capacity.
2. Respondents are certificated employees of the District.
3. Before March 15, 2010, pursuant to Education Code sections 44949 and 44955, Ms. Phifer, as Designee of the District Superintendent, notified the Governing Board of the District of the Superintendent's recommendation that respondents be notified their services will not be required for the ensuing school year. The Superintendent's notification to the Governing Board set forth the reasons for the recommendation.
4. On or before March 15, 2010, each respondent was given written notice that the Superintendent had recommended that notice be given to respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing year. Each written notice set forth the reasons for the recommendation. The notices satisfied the requirements of sections 44949 and 44955. *San Jose Teachers Association, Inc. v. Allen* (1983) 144 Cal.App.3d 627, 632; *Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 803-04, distinguishing *Karbach v. Governing Board* (1974) 39 Cal.App.3d 355, 360-63.
5. Each respondent timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year. Accusations were timely served on respondents, and each respondent filed a timely Notice of Defense. All pre-hearing jurisdictional requirements have been met.
6. The Governing Board of the District took action in Resolution No. 10-114 to discontinue the following services for the 2010-11 school year:

<u>Particular Kind of Service</u>	<u>Discontinuance or Reduction</u>	<u>Full time Equivalents</u>
Kindergarten through 6 th grade regular education classroom teaching services	reduction	48.0 (achieved via 20 FTE regular education classroom teacher retirements plus layoffs of remaining 28 FTEs)

Language Academy regular education classroom teacher services	reduction	4.0
Resource teacher services (relates to academic resource teachers, not special education nor language academy)	reduction	4.0
Speech language and hearing teaching services	reduction	1.0 (achieved via a vacancy)
Literacy coach services (Reading First)	discontinuance	2.0 (all) (achieved via 1 FTE retirement plus layoff of remaining 1.0 FTE)
Assistant principal services	reduction	1.0
Social worker services*	discontinuance	1.0 (all)
Services of Coordinator, Educational Services	reduction	1.0 (achieved through a vacancy)
Resource specialist services (special education)	reduction	1.0 (achieved through a retirement)
Principal on special assignment	discontinuance	1.0 (all) (achieved through a resignation)
Impact teacher services (including categorically funded)*	discontinuance	35.0 (all)
	TOTAL FTEs	99.0

* Inclusion of any categorically funded services within this Resolution is not intended to grant those individuals who are impacted any rights greater than provided by law, nor to nullify any provisions within each impacted individual's employment contract, nor to supersede any other action by this Board to release or otherwise terminate the services of any impacted individual.

The resolution also provided:

“5. Subject to requirements (if any) within the Educational Employment Relations Act, that for purposes of “competency” as to “bumping” (displacement) rights within the meaning of Education Code section 44955(b) and as to reemployment rights within the meaning of Education Code sections 44956 and 44957, to the extent such might apply, “competency” shall be based upon all of the following:

(a) The criteria as set forth within Board Policy 4117 (“To be considered competent, an employee must have academic training and one year of full-time experience in the specialized area to which the district would be able to assign him/her. The district will also consider the recency of the employee’s experience.”), such that to allow for “bumping” or reemployment into the position, the employee bumping or being reemployed must have previously served in this school district for at least one school year of continuous full-time experience in those particular kinds of services into which the employees will bump or be reemployed; and

(b) possession and current filing of a preliminary or clear credential for the subject matter into which the employee would bump for the 2010-2011 school year or be reemployed, and

(c) highly qualified status within the meaning of the No Child Left Behind Act (if required or appropriate for the position into which the employee would bump for the 2010-2011 school year or be reemployed, and

(d) an appropriate EL authorization (if required by the position into which the employee would bump for the 2010-2011 school year or be reemployed).”

The Governing Board adopted Board Policy 4117.3, which it last revised on July 20, 2006. In it, the Governing Board provided:

“To be considered competent, an employee must have academic training and one year of full-time experience in the specialized area to which the district would be able to assign him/or. The district will also consider the recency of the employee’s experience.”

The services set forth above are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. *California Teachers Association v. Board of Trustees of the Goleta Union School District* (1982) 132 Cal.App.3d 32, 34-37 and cases cited therein. *See also San Jose Teachers Association v. Allen, supra* at 635-38, in which the court specifically rejected the reasoning of *Burgess v. Governing Board* (1974) 41 Cal.App.3d 571; *Zalac v. Governing Board* (2002) 98 Cal.App.4th 838, 853-54.

Furthermore, these services may be reduced because of budgetary difficulties. *Zalac v. Governing Board, supra*, and cases cited therein. The decision to reduce or discontinue the services is neither arbitrary nor capricious but rather a proper exercise of the District's discretion.

7. In Resolution No. 10-114, the Board also provided:

“7. In addition to the criteria referenced above in section 5, Education Code section 44955, subdivision (d)(1), shall be implemented to deviate from terminating certificated employees in order of seniority, as related to the following specific courses and/or courses of study:

- (A) The visual performing arts program at Mendoza Elementary School;
- (B) instrumental music program (instructional music teaching services);
- (C) this district's Language Academy's certificated staff such as classroom teachers and its resource teacher.

The certificated employees currently serving in those specific courses or courses of study shall be “skipped” and not subject to layoff, as permitted by Education Code section 44955, subdivision (d)(1) due to the current employees serving in those specific courses and/or courses of study possessing special training and experience necessary to teach each respective course or course of study, which others with more seniority do not possess. Such employees also shall not be “bumped” or displaced by any more senior employee, and no employee shall be reemployed into any of the above specific courses or courses of study unless such employee has previously served in such applicable specific courses or courses of study within the amount and duration referenced above in section 5 (a) and otherwise meets the qualifications within section 5, above.”

8. The reduction or discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees of the District as determined by the Governing Board.

9. The Governing Board considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

10. The Governing Board established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. The Board provided the order of termination shall be based on the needs of the District and its students.

11. The District created a Seniority List which contains employees' seniority dates (first date of paid service), hire date, credential, sit/position, and funding source. The District used the Seniority List to develop a proposed layoff and “bumping” list of the least senior employees currently assigned in the two services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to “bump” other employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could “bump” other employees.

12. Jacqueline Padilla has a special education credential and currently teaches special education to mild/moderate students. Her seniority date is September 9, 2009 and she is the only special education teacher proposed for layoff. The Governing Board intends to

reduce the services of a resource specialist in special education, but that reduction was achieved through a retirement.

Lisa Powell (seniority date of August 30, 2006) holds a multiple subject credential and teaches first grade. She also holds a special education credential. She was proposed for layoff as a regular education K-6 classroom teacher. By virtue of her special education credential and her seniority, Ms. Powell could bump Ms. Padilla and teach in the special education program. When she was notified of her opportunity to bump Ms. Padilla and teach special education, Ms. Powell indicated she did not want to do so. By letter dated March 5, 2010, Ms. Phifer wrote to Ms. Powell, summarized what had occurred, offered her an opportunity to serve in special education for the 2010-11 school year, and requested a response by March 19, 2010. Ms. Powell did not respond to the letter.

Ms. Powell testified at the hearing that she knew she had the right to bump a junior teacher and remain with the District to teach special education, and knew that if she did not do so, she would be laid off. Ms. Powell testified she preferred the layoff, and added that if she were laid off and a special education position later became available, she would decline it.

13. The District operates a Language Academy at Nestor Elementary School. Nestor is the only site within the District which has a language academy. Nestor is a magnet school. The language academy is a dual immersion (also called two-way immersion) program for students beginning in kindergarten. In kindergarten and first grade, the students are taught the all subjects with 90 percent of the instruction in Spanish and 10 percent in English. In the second grade, all subjects are taught with 80 percent of the instruction in Spanish and 20 percent in English. The ratio of Spanish and English instruction continues to change until by fifth and sixth grade, instruction is provided half in Spanish and half in English. There is no transitioning within the program. The strategies for teaching within the program are different from the strategies used in either regular classrooms or English learner classrooms. The goals of the English learner and dual immersion programs are also different. In English learner programs, the goal is to prepare Spanish-speaking students to learn in English, and by the third grade, Spanish is only used in support of the teaching that takes place in English. The effect of the dual immersion program is that all students are taught all subjects in both languages. The goal is to develop multiculturalism and bilingualism so that students read, write and speak in two languages proficiently.

In order to implement the Language Academy program, the District is very selective in the teachers it assigns to the program. It looks for teachers who want to be involved in the immersion program and are aligned with its goals. Every teacher must have a BCLAD as a minimum and demonstrate a high level of proficiency in Spanish. The District requires a higher level of Spanish proficiency than it requires of a teacher who teaches in the English learner program. The District uses the hiring process to determine if a teacher has the requisite proficiency. Hiring is done by a committee composed of the principal, a resource teacher, a classroom teacher or others. Part of the selection involves a written test and parts of the hiring interview are conducted in Spanish.

Once a teacher is selected to teach in the Language Academy, he or she receives specialized in-house training. Teachers are required to spend three hours a week in curriculum planning, they must receive new teacher training from a coordinator, there is continuous staff development, they observe other teachers, and so forth. The school maintains a log which shows professional development. In addition, many of the teachers are attending a dual language certification program at SDSU.

14. Desiree Million (seniority date of August 30, 2006) has a multiple subject credential and a BCLAD. She teaches a sixth grade English immersion class at Oneata, which is an English learner class. She testified at the hearing that she uses the same textbooks as those used in the Nestor Language Academy. She testified she has a supplemental credential in Spanish although that was not reflected in the District's files, and is fluent in Spanish. She deals with parents of her students in Spanish and often translates letters for them. She testified she received GLAD training (Guided Language Acquisition Development) which teachers in the Language Academy also receive and attended a CAFE conference that some dual immersion teachers attended. She believes she uses the same strategies that dual immersion teachers use.

Ms. Million testified she lived for a year in Chile and completed her Spanish degree at a university there. She testified she considered interviewing for a position at the Language Academy but did not apply, and has not taught dual immersion, although she did student teaching in bilingual classrooms.

15. Lilliana Robles (seniority date of September 25, 2006) has a multiple subject credential and a BCLAD. She was born in Tijuana and attended a bilingual school there until the sixth grade and obtained bachelor degrees in Spanish and liberal arts from SDSU. She is fluent in Spanish and teaches a structured English immersion class at Bayside. She teaches Spanish-speaking student to speak English.

Ms. Robles has never taught at the Language Academy. She has not received training in dual immersion but did attend some training programs at Nestor that other teachers in the dual immersion program attended. She would teach in the Language Academy if offered a position there.

16. Hilda Mercado (seniority date of 8/29/07), Mark Emmons (seniority date of 8/30/06), Brenda Robles (seniority date of 9/30/08), and Carol Guadiana (seniority date of 9/18/08) have multiple subject credentials and each has a BCLAD. None have taught in the dual immersion program, none have applied to teach in the Language Academy, and none have had the training that teachers in the dual immersion program have received.

It was stipulated at the hearing that each would testify to similar matters as did Ms. Million and Lilliana Robles.

The least senior teacher assigned to the Language Academy at Nestor is Salvador Macias, whose seniority date is September 25, 2006.

17. Carolina Ruvalcaba (seniority date of 8/30/06) has a multiple subject credential and a BCLAD. She teaches in the dual immersion program at Nestor. Before she was hired, she went through the interview process which included testing of her Spanish proficiency. Since she began teaching at Nestor, she has received extensive training in the dual immersion program and is currently attending the SDSU program in dual immersion. She testified at the hearing that the training she has received is focused on dual immersion. She testified the information contained on the Professional Development Log was accurate. Ms Ruvalcaba received a precautionary layoff notice.

It was stipulated at the hearing that the other teachers who teach in the Language Academy at Nestor and who received precautionary notices of layoff would testify that the information contained on the Professional Development Log was accurate as to them.

18. The District employs a number of teachers who serve in the position of Academic Coach. The Governing Board approved a job description of Academic Coach on April 23, 2009 and it provides that an Academic Coach leads and supports the members of the school staff to assure “. . . that effective and efficient systems are in place to support the continuous academic progress in all content areas.” The coach serves as a liaison for the learning community to provide support to teachers for grade level plans, curricula, monitoring student progress, differentiating instruction, instructional materials, professional development, site activities, parent involvement and communication, and promoting safe schools. The job description listed a number of “essential job functions” and other job functions.

The job and education requirements are a current California teaching credential, a CLAD or BCLAD, and a Bachelor’s Degree with a Master’s Degree desirable. For experience, the job requires a strong background and demonstrated success in teaching language arts, English development and mathematics; demonstrated success in differentiating to meet the needs of the English Language Learners, at-risk learners, and gifted and talented learners; experience or leadership in mentoring, peer coaching and conducting professional development; and training and experience in bilingual/cross-cultural teaching methodologies and successful classroom teaching experience, English as a Second Language instruction, and sheltered instruction; and at least five years of successful classroom experience.

According to Ms. Phifer, the teachers who serve as Academic Coaches were hired in the spring of last year but the program began in the 2009-10 school year. She testified the hiring process was two-tiered. The District had a reading specialist position which it eliminated, but the teachers in that position were considered for the coaching positions. She testified there were some qualifications the District preferred, including five years of teaching, knowledge of strategies in math, proficiency in teaching skills, and modeling.

19. Cynthia Smith-Ough (seniority date of September 4, 2007) holds a multiple subject credential and a CLAD. She is an Academic Coach at Berry School.

Delia Diaz (seniority date of September 11, 2007) holds a multiple subject credential and a BCLAD, and a clear reading certificate. She is an Academic Coach at Imperial Beach.

Ms. Smith-Ough and Ms. Diaz began serving as academic coaches at the beginning of the 2009-10 school year. There is no evidence that they served in a similar capacity with the District prior to the creation of the position of Academic Coach on April 23, 2009. Neither teacher received a precautionary layoff notice.

The Governing Board did not reduce or discontinue the services of an Academic Coach.

20. Michelle Syverson (seniority date of October 3, 2005) holds a multiple subject credential and a CLAD. She was bumped by a more senior teacher whose position as a literacy coach was discontinued, and received a layoff notice. She testified at the hearing that she has interviewed for the position of literacy coach and would serve as an academic coach next school year if she could.

Ms. Syverson testified that she obtained her credential in 2001 and began teaching in Anaheim in the 2001-02 school year. Among her duties was as a shared SAT9 coordinator. She taught in Lemon Grove for the 2002-03 school year and taught two years in the Chula Vista Elementary School District. Since being hired by the District in 2005, Ms. Syverson has been a district trainer in SB472, HSP Math, and Fast Forward Math, has been a site trainer, and served on various committees. In these capacities, she has trained other teachers in math. She believes she is qualified to serve as an Academic Coach. She has not taught language arts.

21. Beverly Gonzalez (seniority date of November 2, 2005) holds a multiple subject credential and a BCLAD. She testified at the hearing that she coaches teachers in art and bi-literacy and has coached other teachers in reading but not math. She believes she could teach at the language academy and applied for a position there four to five years ago but then withdrew her application. She has taught English Language Learners in the District but has not taught in the dual immersion program. She has not held a position as a job coach.

Ms. Gonzalez did not request a hearing nor did she advise the District that she was qualified to teach other positions.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter relating to the elimination of 99 full-time equivalent positions exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Education Code section 44949 provides in part:

“(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to

subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. 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. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.”

3. Regarding Factual Finding 21, Ms. Gonzales did not request a hearing after she received her layoff notice. She offered no explanation for her failure to request a hearing. Based upon section 44949, it must be concluded that she waived her right to a hearing. *See Tucker v. San Francisco Unified School District* (1952) 111 Cal. App. 2d 875, 883-84. She therefore is not entitled to have her credentials considered to determine whether she may bump one of the Academic Coaches or a teacher in the Language Academy.

4. Education Code section 44955 provides in relevant part:

...

(b) *[W]henver a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become 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, 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. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.*

(c) ...

The governing board shall make assignments and reassignments in such a manner that the 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, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, 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.*

(2) *For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.*

To put it more succinctly, 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. See *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469. Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. See *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; see also *Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.

5. Regarding Factual Finding 12, Lisa Powell, with a special education credential, is senior to Jacqueline Padilla, and has a statutory right to bump Ms. Padilla. Knowing that she has that right, and knowing that if she did not exercise it, she would be laid off, Ms. Powell preferred a layoff than to teach special education. A statutory right may be waived. *Tucker v. San Francisco Unified School District, supra*. Ms. Powell’s waiver was done knowingly and voluntarily. Consequently, Ms. Padilla should not be bumped from her position, and the accusation against her must be dismissed.

6. Regarding Factual Findings 13 through 17, the District takes the position that the teachers currently employed in the Language Academy at Nestor and who have taught there for at least one year satisfy the Governing Board’s competency standard set forth in Resolution Number 10-114 and Board Policy 4117.3, while the teachers who do not teach within the Language Academy do not meet the competency standard.

Before turning to the application of the competency standard, it must be noted that respondents Lilliana Robles, Hilda Mercado, Brenda Robles, and Carol Guadiana have less seniority than Salvador Macias, who is the most junior teacher assigned to the Language Academy. Thus, none of those respondents have the right to bump into a position as a teacher in the Language Academy. Only respondents Desiree Million and Marc Emmons have sufficient seniority to bump into a position in the Language Academy.

However, it must be concluded that while they have the requisite credentials to teach in the program, they do not have the competence required by section 44955, subdivision (b). The Governing Board determined that “one year of full-time experience in the specialized area” was a criterion of competence. A District is permitted to establish a standard of competency that includes prior teaching experience in the relevant subject area. *Duax v. Kern Community College Dist.*, (1987) 196 Cal.App.3d 555, 562-67. Given the rigorous requirements for Spanish proficiency incorporated into the hiring process for a position in the Language Academy, and the significant on-going training teachers within the program receive, it is appropriate to require a teacher who desires to bump a teacher within the program to have one year of experience in the specialized area of dual immersion.

Neither Ms. Million nor Mr. Emmons satisfy this criterion. Accordingly, their layoffs must be upheld.

7. Regarding Factual Findings 18, 19, and 20, the same considerations of competence apply, but the conclusion is different. The evidence established that the position of Academic Coach was established by the Board on April 23, 2009. Teachers began serving as Academic Coaches in the 2009-10 school year. Thus, at the time the District determined who it was going to lay off, no one had served one year in that position. There was some testimony that the Academic Coach position evolved from a reading specialist position, but no evidence was offered to show that competence as an Academic Coach could have been achieved by a teacher serving in that or any other position. The Governing Board did not establish any specific criteria for competence as coaches nor did it choose to apply section 44955, subdivision (d) to Academic Coaches in order to skip junior teachers.

Michelle Syverson is senior to both Cynthia Smith-Ough and Delia Diaz who serve as Academic Coaches. She holds the same credentials as they do and has extensive experience as a coach. No persuasive evidence was offered to establish that Ms. Smith-Ough and Ms. Diaz should have been skipped and Ms. Syverson should have been laid off. Accordingly, the accusation against Ms. Syverson must be dismissed.

8. Cause exists under Education Code sections 44949 and 44955 for the District to discontinue particular kinds of services relating to 99 full-time equivalent positions. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the Accusation. It is recommended that the Board give respondents notice before May 15, 2010, that their services will no longer be required by the District.

ORDER

1. The accusations served on respondents Jacqueline Padilla and Michelle Syverson are dismissed.
2. The accusations served on the precautionary respondents are dismissed.

3. The Accusations served on the remaining respondents set forth in Exhibit B, below, are sustained. Notice shall be given to each respondent before May 15, 2010 that his or her services will not be required for the 2010-11 school year pursuant to the Governing Board's resolution because of the reduction of particular kinds of services.

Notice shall be given in inverse order of seniority.

DATED: _____

ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

**SOUTH BAY UNION SCHOOL DISTRICT
EXHIBIT "B" TO ACCUSATION
First Amendment; April 27, 2010 @ 3:30 p.m.**

RESPONDENTS (hi-lighted) WHO REQUESTED A HEARING (Ed C 44949)

Those who initially requested a hearing but later FAILED to file a Notice of Defense are crossed out.

RESPONDENTS (received standard notices):

Ashley, Kathy
Bajo, Olga
Camargo, Irene
Davis, Laura
Duff, Andrea
Emmons, Marc
Guadiana, Carol
Guido, Annalicia
~~Jacobs, Desiree~~
~~Luna, Gil~~
Malls, Elizabeth
Mason, Deborah
McKinney-Nokes, Kathleen
(.5 FTE)
~~Medina, Helena~~
Mercado, Hilda
Meyer, Jenni
Million, Desiree
Parker, Karen
Pehrson, Erika
Powell, Lisa
[issue: does not want to bump]
Robles, Brenda
Robles, Liliana
Smith, Alexandra
Sullivan, Kelly
Sumaya Jr., Alfonso
Villegas, Jose

PRECAUTIONARY RESPONDENTS (included due to potential arguments of others):

Garcia, Gwendolyn [issue: LA skip]
Macias, Salvador [issue: LA skip]
Ruvalcaba, Carolina [issue: LA skip]
Uribe, Delia (filed late 44949 request for hearing) [issue: LA skip]
Vargas, Alexandra [issue: LA skip]
Villegas, Patricia [issue: LA skip]

PRECAUTIONARY RESPONDENTS (categorical, temporary contracts; served should each disagree that possess no right to layoff process)

(None)

EMPLOYEES WHO NEVER FILED 44949 REQUEST FOR HEARING BUT FILED NOTICE OF DEFENSE

PRECAUTIONARY RESPONDENTS

Cappadona, Laura [issue:VPA skip]
Vaca, Teresa [issue:VPA skip]

**EMPLOYEES WHO WERE SERVED NOTICES AND
FAILED TO FILE ANY REQUEST FOR HEARING
OR NOTICE OF DEFENSE**

Served with standard notices:

Ambriz, Saul
Arancibia, Candice
Cuevas, Lorena (0.5 FTE)
Ferguson, Jackie
Fuller, Jennifer
Gonzalez, Beverly
Kuenzi, Kayne
McFerrin, Deborah
Meyers, Jessica
Nelson, Michelle
Quinby, Katie
Rogan, Kathleen

Served with precautionary notice due to potential arguments of others:

Acuna, Aracely [issue: LA skip]

*Served with precautionary notices should each disagree that possess no right to layoff process
(categorical, temporary contracts):*

*Ballestamon, Caren
Barrera, Vanessa
Boyd, William
Costello, Kathryn
De Ochoa-Dewald, Esmeralda
De Vos, Virginia
Ecclefield, Erin
Feilen, Barbara
Frazier, Thomas
Galbadores, Faith
Gibbs, Cecily
Guzman, Yessenia
Hendricks, Kelly
Huchingson, Amy
Kyle, Stephanie
Leahy Jr., John
Mann, Maggie
Mann, Nicole*

*Matthew, Alexia
Mazza, Dean
Meeks, Roseann
Miana, Elaine
Moua, Pa
Munguia, Gladys
Robinson, Natalie
Stanley, Kathleen
Slater, Colleen
Stall, Stacia
Sullivan, Joan
Viani, Michael
Walters, Mark
Weinhouse, Marilyn
White, Shaina
Wraith, Patrick
Wraith, William*