

BEFORE THE
GOVERNING BOARD OF THE
TRAVIS UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter Of The Accusations Against:

ELIZABETH RILEY
AMY PETERS
JESSICA STINSON
STEPHANIE FADELLI
WENDY DUNHAM
TINA AHN
CARIN BRYAN
JANE CERIANI
NORM DEPONTE
JAINCE EWING
CHRISTIE GOVERNOR
JUAN GUZMAN
KIM KAYLOR
JEFF KUBIAK
ADAM LUNDY
STEVEN MIKESELL
CINDY MORRIS
SANDRA RADELEFF
CHRISTINA RIDDOCK
MONICA ROBERTSON
MARY STEINDORF
MELISSA SWANGER
JESSE LOREN
PATRICIA BERNAL

OAH NO. N2004020396

Respondents.

PROPOSED DECISION

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings,
State of California, heard this matter on April 7, 2004, in Fairfield, California.

Jonathan A. Pearl, Attorney at Law, of Miller Brown & Dannis represented the Travis Unified School District.

A. Eugene Huguenin, Jr., Attorney at Law, represented all of the respondents.

Evidence was received and the matter was submitted on April 7, 2004.

FACTUAL FINDINGS

1. The Travis Unified School District ("District") is comprised of approximately 5300 students. The District has five Elementary Schools (two of which are located on the Travis Air Force Base), a Middle School, a High School, a Continuation School and a Community Day School.

2. On February 10, 2004, the Governing Board of the District ("Board") adopted Resolution No. 2003-04-14. The resolution directed the Assistant Superintendent, Steve Vaczovsky, to give notices to respondents that their services would not be required for the ensuing school year (2004-2005). The resolution proposed the elimination or reduction of particular kinds of services. The specific particular kinds of services ("PKS") to be reduced or eliminated are: ¹

1. Twenty-three (23) FTE Elementary Education
2. Four (4) FTE Elementary Physical Education
3. Two (2) FTE Reading Specialist
4. One (1) FTE Elementary Librarian
5. One (1) FTE Psychologist
6. Three-fifths (0.6) FTE District Volunteer Coordinator (full position)
7. Three-fifths (0.6) FTE High School Vocal Music (full program)
8. One-half (0.5) FTE Curriculum Specialist
9. One-third (0.33) FTE- (2 sections) Middle School Science
10. One-sixth (0.17) FTE (1 section) Middle School Drama
11. One-sixth (0.17) FTE (1 section) Middle School Band
12. One-sixth (0.17) FTE (1 section) Middle School Physical Education
13. One-sixth (0.17) FTE (1 section) Middle School Literacy Lab

3. The District determined that in order to accomplish the discontinuance or reduction in PKS, 33 full time equivalent ("FTE") positions would be eliminated. On March 11, 2004, the Assistant Superintendent gave written notice to the Board of his recommendation that notice be given to certificated employees whose positions would be lost

¹ The District represented at hearing that the PKS identified in items 3 through 8 and 10 through 13 will not be discontinued due to the subsequent passage of Propositions 57 and 58 and due to resignations and involuntary transfers of personnel.

through the reduction or elimination of PKS, that their services would not be required for school year 2004-2005.

4. On or about March 11, 2003, respondents were served in the manner prescribed by law with written notice that it had been recommended that notice be given them that their services would not be required for the 2004-2005 school year, and stating the reasons therefore. Respondents, with the exceptions of Jesse Loren and Patricia Bernal, filed a timely Request for a Hearing and a timely Notice of Defense to the Accusation which followed. The District waived any objections to the timeliness of Jesse Loren's and Patricia Bernal's filings.

5. Each of the respondents is a certificated employee of the District.

6. Resolution No. 2003-04-14 included a further resolution that "it will be necessary to retain the services of certificated employees in the 2004-2005 school year regardless of seniority, who provide services in and possess qualifications needed for the following programs":

1. Bilingual Immersion Program at Cambridge Elementary School
2. English Language Learner Programs
3. Special Education Programs (except Psychologists)
4. Counseling Programs
5. Travis Arts and Academics Visual and Performing Arts Program at Center Elementary School
6. Travis Unified School District Alternative Education Program (Travis Community Day School (CDS) and Travis Education Center (TEC))

7. In Resolution No. 2002-04-15, also passed on February 10, 2004, the Board adopted tie-breaker criteria for those certificated employees with the same first date of paid service. Points were assigned in four categories: Credentials and/or Degrees Held, Credentials to Provide Service in ELL, BCLAD or Special Education, Current Assignment in Arts and Academics or JROTC, and Teaching Experience. The resolution provided that any remaining ties would be broken by lot.

8. The 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. As of the date of the hearing, the Board determined that the reduction in PKS could be decreased to 13.33 FTE.

9. The affected employees raise the issue of whether the Board may terminate senior employees while retaining junior employees "who provide services in and possess qualifications needed for English Language Learner Programs ("ELL")"? ²

10. If those teachers who hold ELL certificates are "skipped", the seniority list indicates that notice would be given to respondents Carin Bryan, Jane Ceriani, Janice Ewing, Christie Governor, Kim Kaylor, Pam Miller, Amy Peters, Sandra Radeleff, Christina Riddock, Monica Robertson, Julie Sill, Juan Guzman, and Cindy Morris (each 1 FTE) and to Steven Mikesell (.33 FTE). If ELL certificate holders are not skipped, notice would instead be given to respondents Elizabeth Riley, Amy Peters, Jessica Stinson, Stephanie Fadelli, Wendy Dunham, Jennifer Ikemiyagi, Kim Kaylor, Christina Riddock, Jan Howsden, Julie Sill, Norm DePonte, Cindy Morris, (each 1FTE) and Steven Mikesell (.33 FTE).

11. Kathleen Bond, Assistant Superintendent for Educational Services and Steve Vaczovsky, Assistant Superintendent, Human Resources, testified in support of the Board's decision to exempt from lay off those teachers holding ELL certificates. They explained that budgetary cutbacks and an anticipated reduction in housing at the Travis Air Force Base necessitated the decision to reduce overall PKS for the 2004-2005 school year.

Ms. Bond testified that the decision to skip junior certificated teachers with ELL certificates was based on findings by the California Department of Education ("DOE") in its 2001-2002 Coordinated Compliance Review. The DOE's review of the District's English Learners program found that the District had an inadequate number of qualified teachers assigned to provide English Language Development instruction. The DOE's review noted, "Many English learners are placed in mainstream English classes with teachers who do not have appropriate certification."

Ms. Bond described ELL programs. She explained that ELL programs are based on federal and/or state mandates and the "No Child Left Behind Act". One of the goals of the legislation is the mainstreaming of English learners into the overall academic program. The Districts must identify students whose native language is not English. These students are designated for specialized instruction and materials in order to become more proficient in English. There are entrance and exit criteria for the program. There are yearly review procedures and evaluations of the students to make certain that they are both acquiring course contents and improving in their English language skills.

Students are classified according to levels of English language development. Levels range from 1 through 5. Thereafter, there are three monitoring levels. Students with little or no English are placed in an English Immersion program. Once the student reaches a level of

² Certified employees, regardless of seniority, were retained to teach Travis Arts and Academics Visual and Performing Arts Program at Center Elementary School ("VSP"). Although there was some indication that VSP skipping might be at issue, no evidence was received or argument made that skipping junior teachers who taught in the VSP program was in violation of law. Thus, that issue was not considered herein.

3 or 4, she or he is mainstreamed into regular classrooms. A teacher with an ELL student in his or her classroom is responsible for specialized instruction and testing of that student. It is the teacher's responsibility to ensure that the student masters the course content and that the child moves upward at least one level. Once the student becomes proficient in English, the student is still monitored to ensure that his or her grades do not slip; an indication that the student may not be acquiring course content.

12. Ms. Bond and Mr. Vaczovsky voiced the District's concern that unless it retains all teachers with ELL certification, it would again be non compliant with the ELL program requirements that all ELL students be placed in a classroom with an ELL teacher. They testified that non compliance would probably cause the District to lose Federal and State funding. The DOE reviews the District's compliance with ELL requirements every four years, with self auditing and reporting in the interim. The next audit will take place in 2005-2006.

13. The District's goal is to have 100% of the faculty with ELL certificates before 2006. The District has actively encouraged teachers to obtain ELL certification. It has offered a \$400 incentive pay, and has held ELL certification training on campus. The District has provided related staff development classes in how to use the certification once it is obtained. The ELL certification training program is also available on line. In the 2003-2004 school year there were approximately 100 certificated staff of a total certificated staff of approximately 350 who held some form of ELL certificate. In the current school year, there are an estimated 130 teachers holding ELL certificates. There are approximately 30 teachers in the ELL certification training program who are scheduled to obtain their certificate before the 2004-2005 school year commences. Respondents provided evidence that many additional teachers are obtaining CLAD certifications and will also be able to teach ELL students.

14. There are currently 190 ELL students at levels 1 through 5. There are 142 ELL students who are fluent in English. The latter students do not require placement in a classroom staffed with an ELL teacher, but they do require an ELL teacher to monitor their progress, provide supplementary services, and to keep pertinent data. The evidence was unclear whether Federal and/or State mandates require that an ELL credentialed teacher perform this monitoring. The District has one English Immersion class. The number of ELL students is expected to continue to grow.

15. The District did not produce evidence that each ELL teacher currently has an ELL student in his or her classroom. The District did not produce evidence of the number of certificated ELL teachers it would lose if it was not able to exempt senior non ELL teachers.

16. Respondents argued that the District did not need to skip ELL teachers in order to ensure that it could place all ELL students in a classroom with an ELL teacher. Respondents suggested that the District employ various measures to utilize the more senior ELL teachers, such as placing more children in a classroom that has an ELL teacher, transferring teachers to other schools in the District where they were needed, transferring

students to a campus with a classroom with an ELL teacher, and assigning new ELL students to campuses with ELL teachers. Respondents argued that the District could meet its goals by attrition and training incentives already in place. The District countered by pointing out the many considerations that go into the formulation of classrooms. The District maintained that teachers and students would be uprooted and disrupted by intercampus transfers.

17. The feasibility of both parties' arguments cannot be tested, of course, without evidence of the current distribution of ELL students and ELL teachers in classrooms, the projected number of ELL teachers too senior to be subject to layoff and their assignments, and the projected number of ELL students and their grade levels.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in the California Education Code³ sections 44949 and 44955 were met.

2. Education Code section 44955 provides in pertinent part:

.....
(b) Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions 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

³ All statutory references are to the California Education Code unless otherwise stated.

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) 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. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

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. However, prior to assigning or reassigning any certificated employee 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 of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(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 the purpose of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws. (emphasis added)

3. Education Code section 44955 provides that when certificated employees face layoffs due to economic exigency, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers, if the senior teacher has both the credentials and competence to occupy such positions. The intent of the Legislation is clearly to prevent Districts from laying off senior teachers while retaining junior teachers.

However, the District is permitted to depart from a seniority-based economic layoff in situations 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 exempted from layoff) 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." [section 44955 (d) (1)]. The issues herein are whether the District demonstrated a "specific need" for personnel

to teach a "specific course or course of study", and if so, whether it is "necessary" for employees to hold ELL certificates in order to teach Ell "courses".

4. The Board resolved to exempt any certificated employee teaching any course in any school if the certificated employee "provides services in and possess qualifications needed for ...English Language Learner Programs". At hearing, the District introduced evidence designed to show that ELL programs were a "course of study". The District focused on the programming requirements for ELL students; providing testimony that the ELL students received specialized instruction in course content and received evaluation, testing and monitoring.

Respondents countered that the ELL program is not a course or a specific course of study. The program does not have specific course content but is rather a system of accommodations designed to make the course contents of all courses more available to non native speakers. Respondents maintain that the ELL program encompasses all students in all grades on all campuses and does not meet the definitions of "course of study" and "course" as set forth in Education Code sections 51014 and 51015, respectively.

5. 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." Section 51014 states "'Course of study' means the planned content of a series of classes, courses, subjects, studies, or related activities."

It is clear that the ELL program provides instruction to students. However, the "field of organized knowledge" and the "planned content" of the studies vary from class to class. The instruction is tied to the course content of the class being taught (eg Math, Reading, Writing, Science, Arts, Social Studies, Computer Skills etc.).

6. The legislative intent of the ELL program is helpful in determining whether ELL programming is a specific course or course of study as defined in Education Code section 44955 (d) (1). In 1992, the Legislature found that

...almost one million, or one in every five, pupils in California's public schools are of limited English proficiency, and that the number of those pupils is increasing rapidly. In addition, the number of primary languages spoken by California's limited-English-proficient pupils is increasing. The Legislature recognizes that limited-English-proficient pupils have the same right to a quality education as all California pupils. For these pupils to have access to quality education, their special needs must be met by teachers who have essential skills and knowledge related to English language development, specially designed content instruction delivered in English, and content instruction delivered in the pupils' primary languages.Section 44253.1

The Legislature directed the Commission on Teacher Credentialing to issue certificates authorizing the holders to provide certain services to limited-English proficient pupils. Section 44253.3 et seq. Teachers were thus enabled to obtain what became known as

BCAD and CLAD credentials. Those with CLAD credentials were qualified to provide instruction for English language development (instruction designed specifically for limited-English-proficient pupils to develop their listening, speaking, reading, and writing skills in English) and to deliver specially designed content instruction delivered in English (instruction in a subject area, delivered in English, that is specially designed to meet the needs of limited-English-proficient pupil).

Those with BCLAD credentials were authorized to provide the services a CLAD certificated teacher could. Additionally, BCLAD holders were authorized to provide content instruction delivered in the primary language (instruction in a subject area delivered in the primary language of the pupil) and instruction for primary language development (instruction designed to develop a pupil's listening, speaking, reading, and writing skills in the primary language of the pupil.)

7. Two years later, in 1994, the Legislature found that additional steps should be taken to mainstream LEP [Limited English Proficiency] students. The Legislature "found and declared" that the new credentialing system including CLAD was designed to provide "equal educational access to the curriculum" to pupils who speak limited or no English proficiency. (emphasis added) (Section 44253.10 Leg. Intent. The Legislature found that the trend toward a more culturally diverse population will continue at a rising pace. The Legislature declared the CLAD certification program was providing for the preparation and credentialing of teachers for LEP [Limited English Proficiency] students. However, the Legislature found that the CLAD certification program was not meeting immediate needs. It found;

For the near future, there is a shortage of teachers who will meet the educational requirements of the CLAD certificates. However, there is an abundance of LEP pupils who need trained and competent teachers. In appreciation of these current circumstances, and as an alternative to the CLAD certificate program for a limited duration to efficiently and quickly generate a sufficient number of experienced, competent teachers to provide equal educational access for the large school age population of LEP pupils in this state, the Legislature hereby enacts Section 44253.10 of the Education Code. (emphasis added)

8. Section 44253.10 of the Education Code provides in pertinent part;

(a) A teacher with a basic teaching credential may be assigned to provide specially designed content instruction delivered in English, as defined in subdivision (b) of Section 44253.2, to limited-English-proficient pupils only if the following conditions are met:

(1) The teacher, as of January 1, 1999, is a permanent employee of a school district, a county office of education, or a school administered under the authority of the Superintendent of Public Instruction, or was previously a permanent employee and then was employed in any California public school district within 39 months of the previous permanent status, or has been employed in a school district with an average

daily attendance of not more than 250 for at least two years.

(2) The teacher completes 45 clock hours of staff development in methods of specially designed content instruction delivered in English prior to January 1, 2005. (emphasis added)

(c) The staff development may be sponsored by any school district, county office of education, or regionally accredited college or university that meets the standards included in the guidelines established pursuant to this subdivision or any organization that meets those standards and is approved by the commission. Any equivalent three semester unit or four quarter unit class may be taken by the teacher at a regionally accredited college or university to satisfy the staff development requirement described in either subdivision (a) or (d), or both. Once the commission has made a determination that a college or university class is equivalent, no further review of the class shall be required pursuant to paragraph (5) of subdivision (b), regardless of the date of the initial review.

(d)(1) A teacher who completes the staff development described in subdivision (a) shall be awarded a certificate of completion of staff development in methods of specially designed content instruction delivered in English.

(2) A teacher who completes the staff development described in subdivision (a) may provide specially designed content instruction delivered in English, as defined in subdivision (b) of Section 44253.2, and English language development, as defined in subdivision (a) of Section 44253.2, in any departmentalized teaching assignment consistent with the authorization of the teacher's basic credential. This authorization also applies to teachers who completed the required staff development before the effective date of the amendments made to this section by the act adding this authorization.

(3) A teacher who completes the staff development described in subdivision (a) may not be assigned to provide content instruction in the pupil's primary language, as defined in subdivision (c) of Section 44253.2.

(4) A teacher who completes the staff development described in subdivision (a) may be assigned to provide instruction for English language development, as defined in subdivision (a) of Section 44253.2, in a self-contained classroom under either of the following circumstances:

(A) The teacher has taught for at least nine years in California public schools, certifies that he or she has had experience or training in teaching limited-English-proficient pupils, and authorizes verification by the entity that issues the certificate of completion. The teacher shall be awarded a certificate of completion in methods of instruction for English language development in a self-contained classroom.

(B) The teacher has taught for less than nine years in California public schools, or has taught for at least nine years in California public schools but is unable to certify that he or she has had experience or training in teaching limited-English-proficient pupils, but has, within three years of completing the staff development described in subdivision (a), completed an additional 45 hours of staff development, including specially designed content instruction delivered in English and English language development training, as set forth in the guidelines developed pursuant to subdivision (b). Upon completion of this additional staff development, the teacher shall be awarded a certificate of completion in methods of instruction for English language development in a self-contained classroom.

(e) During the period in which a teacher is pursuing the training specified in paragraph (2) of subdivision (a) or subdivision (d), or both, including the period for the assessment and awarding of the certificate, the teacher may be provisionally assigned to provide instruction for English language development, as defined in subdivision (a) of Section 44253.2, or to provide specially designed content instruction delivered in English, as defined in subdivision (b) of Section 44253.2.

(f)(1) A teacher who completes the staff development with any provider specified in subdivision (c), and who meets the requirements of subdivision (a) or (d) for a certificate of completion of staff development in methods of specially designed content instruction delivered in English or English language development in a self-contained classroom, or both, shall be issued the certificate or certificates.

(2) A teacher who completes a staff development program in methods of specially designed content instruction delivered in English or English language development in a self-contained classroom, or both, who has been determined by the commission to meet the applicable guidelines and standards, pursuant to paragraph (5) of subdivision (b), shall receive a certificate or certificates of completion from the commission.

.....
(3)
(g) The certificate of completion is valid in all California public schools. A teacher who has been issued a certificate of completion may be assigned indefinitely to provide the instructional services named on the certificate in any school district, county office of education, or school administered under the authority of the Superintendent of Public Instruction.

(h)
(i) The governing board of each school district shall make **reasonable efforts** to provide limited-English-proficient pupils in need of English language development instruction with teachers who hold appropriate credentials, language development specialist certificates, or crosscultural language and academic development certificates that authorize English language development instruction.
(emphasis added)

9. Section 44253.10 and its Legislative Intent support respondents' position that the District has not demonstrated a specific need to skip ELL certified teachers. Section 44253.10 provides that the District may provisionally assign teachers to provide English Language Development instruction during the period in which a teacher is pursuing the training for certification. The District has not considered retaining the more senior teachers who are engaged in coursework to obtain their ELL certificate. Mr. Vaczovsky testified that the District did not exempt from layoff those teachers who are in training for certification but who have not yet obtained their certification. The District has thus not complied with section 44955's dictate that "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 cannot show a need to skip all ELL certificate holders, regardless of seniority, without first skipping senior teachers in the process of getting their ELL certificates. These senior teachers may be reassigned pursuant to section 44955 to ELL classrooms.

Section 44325.10 provides that the Board shall make **reasonable efforts** to provide limited-English-proficient pupils in need of English language development instruction with teachers who hold appropriate credentials, language development specialist certificates, or crosscultural language and academic development certificates that authorize English language development instruction. Contrary to the District's assertions at hearing, the Legislature does not require school Districts to place each English Language Learner with an ELL teacher. The Board must make reasonable efforts to accomplish this goal. Termination of senior teachers from employment in favor of junior teachers who hold ELL certificates is an extreme remedy and far exceeds a "reasonable effort". The District has made reasonable efforts by providing a training program, incentives and support to teachers pursuing ELL certification. The District has not shown a need to terminate senior teachers when the applicable statute does not make it mandatory that each ELL student be provided an ELL teacher.

Finally, section 44325.10 permits the District to reassign teachers who have been issued a certificate of completion to any school district or school administered under the authority of the Superintendent of Public Instruction. The District provided evidence that it did not consider reassignment of teachers in making layoff determinations because of the disruption that would ensue. However, the Legislature clearly contemplated that reassignment would be necessary to meet the crisis schools face. A District cannot demonstrate a "specific need" to retain junior employees to meet ELL teaching needs without first having considered reassignments in order to meet that need.

10. Additionally, it is clear from section 44253.10 and its Legislative intent that the Legislature considered the problem of increasing numbers of English Language Learners and enacted statutes designed to quickly qualify teachers to address some of the pupils' needs. If the Legislature had determined that the problem was so great that it needed to retain every ELL teacher, it had the opportunity to amend section 44955 to allow junior teachers to displace senior ones in the event of a layoff. The Legislature did not do so.

11. As set forth in the Factual Findings and Legal Conclusions, the District did not demonstrate a specific need for ELL personnel, as required by section 44955 (d). The evidence is also persuasive that the District did not establish that ELL is a specific course or course of study, as identified in section 44955 (d). The ELL program, as delineated in section 44253.10 is a method of providing English Language Learners with "access to the [public school] curriculum". Teachers must have forty five hours of training (staff development). Teachers are trained in methods and techniques designed to bring the English language curriculum to these pupils. The ELL teachers are not required to acquire a foreign language or to demonstrate competency in foreign language. They are not required to deliver instruction in the pupil's language. The Legislature has set this special certification program to "sunset" in January of 2005, thereby foreclosing additional teachers from obtaining this type of credential. The exigent and limited nature of ELL certification supports respondents' position that ELL teachers do not provide a course or a course of study, but rather provide students with tools to facilitate their mainstreaming into the regular course of study offered by the District.

12. The court of appeal in *Alexander v. Board of Trustees* (1982) 139 Cal. App. 3d 567, considered the application of an earlier version of Education Code section 44955. That section was amended in 1983 to include, among other things, subdivision (d) relating to deviation from the seniority order. *Alexander* is not applicable herein. However, that court acknowledged a principal of fairness which is equally applicable here. The court acknowledged a 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 this case, the District seeks to discharge other wise competent teachers who were hired without the necessity of an ELL certificate and retain junior teachers who have completed forty five hours of staff development and thus secured an ELL certificate. Moreover, the District seeks to do this without sufficient evidence that the needs of the District for a course or course of study require such Draconian measures. The District's teachers are acquiring ELL certificates or similar credentials, perhaps not at the pace the District would prefer. However, the District's progress and the legislative provisions for obtaining ELL certificates demonstrate that there are avenues less punitive than terminating teachers to accomplish the goal of mainstreaming English Language Learners into the schools. The District has shown that a combination of encouragement and positive incentives can quickly swell the ranks of certificated employees with such special skills, without the necessity of discharging more senior teachers in an economic layoff.

13. Cause exists under Education Code sections 44949 and 44955 to provide notice to respondents Elizabeth Riley, Amy Peters, Jessica Stinson, Stephanie Fadelli, Wendy Dunham, Jennifer Ikemiyagi, Kim Kaylor, Christina Riddock, Jan Howsden, Julie Sill, Norm DePonte, and Cindy Morris, (each 1FTE) and Steven Mikesell (.33 FTE) that their services will not be required in the ensuing school year. Such cause relates solely to the welfare of the District and the pupils thereof.

ORDER

Notice shall be given to the identified respondents that their services will not be required for the 2004-2005 School Year because of the reduction and discontinuance of particular kinds of services

Dated: April 23, 2004



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings