

BEFORE THE
GOVERNING BOARD OF THE
SAN JUAN UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the :

PROPOSED REDUCTION OR
ELIMINATION OF PARTICULAR KINDS
OF SERVICES, AFFECTING 23.64 FULL
TIME EQUIVALENT CERTIFICATED
EMPLOYEES.

OAH No. 2008020575

Jakob Blackwell
Erin Cirimele
Timothy Gager
Chris Lenz
Shannon Lopez
Martin McCrory
Matthew Mills
Erica Oswald
Breanna Parker
Jodee Thompson
Phoung Tran

Respondents.

PROPOSED DECISION

On April 23, 2008, in Sacramento, California, Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Linda C.T. Similick, General Counsel, represented the San Juan Unified School District (District).

Michael N. McCallum, Attorney at Law, assisted by Paralegal Robin Thompson, represented the respondents.

Evidence was received, and the record was left open until April 28, 2008, for the receipt of written closing arguments. On April 28, 2008, both briefs were filed. The District's Post-Hearing Brief was marked as Exhibit 31. Respondents' Closing Brief was marked as Exhibit R. The record was closed and the matter was submitted on April 29, 2008.

FACTUAL FINDINGS AND DISCUSSION

1. Prior to March 11, 2008, Larry Graser, Director of Human Resources of the District, sent a written recommendation to the Governing Board of the District (Governing Board) for the reduction or discontinuation of particular kinds of services (PKS), in order to reduce expenses for the 2008-09 school year. As a result of the Governor's January 2008 budget proposal, the District expected to experience a budget shortfall. Mr. Graser recommended the elimination of 134.84 full-time equivalent (FTE) certificated positions.

2. On March 11, 2008, the Governing Board adopted Resolution No. 2420, authorizing the reduction or elimination of particular kinds of services. The Resolution directed the Assistant Superintendent of Human Resources, or his or her designee, to send notices that their services would not be required for the 2008-09 school year to the appropriate number of certificated employees necessary to effectuate the reduction of the certificated staff in an amount equal to 134.84 FTE positions.

3. On March 11, 2008, the Governing Board also adopted Resolution No. 2421, specifying criteria to be used in determining the order of termination of certificated employees with the same District seniority (tiebreaker criteria).

4. On March 12, 2008, Ruth Peshkoff, Assistant Superintendent of Human Resources, caused to be served on all affected employees, including all respondents, written preliminary notices of the recommendation to the Governing Board that respondents' services would not be required for the ensuing school year due to a reduction or discontinuation of PKS. The notices set forth the reasons for the recommendation, as required by Education Code sections 44949 and 44955. The notices provided respondents with information and deadlines for requesting a hearing and included blank Request for Hearing forms. All of the respondents in this action filed timely Requests for Hearing.

5. On March 28, 2008, Larry Graser filed an Accusation against 55 certificated employees, in his official capacity. The Accusation was served on March 28, 2008. Pursuant to a Stipulation between the District and counsel for the represented respondents, respondents' counsel filed one Notice of Defense on their behalf. Thereafter, the matter was set for hearing. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955.

6. Subsequent to the service of Accusations on the affected employees, the District restored several FTEs and thus rescinded nine notices. Additionally, the District removed from the PKS reduction 44.4 FTEs in multiple-subject/self-contained classes. It had become apparent to the District that the Legislature was not going to increase teacher/student ratios, and therefore there was no need to reduce elementary school PKS. Those positions affected by a possible reduction in staff for the K-3 CSR program were removed from the layoff. Additionally, the District took into account all positively assured attrition, including retirements and resignations.

7. As a result of the restoration of multiple PKS, and after accounting for positively assured attrition, the Governing Board directed the District to decrease the number of reduced or discontinued PKS to 23.64 FTE positions, beginning not later than the commencement of the 2008-09 school year, as follows:

	<u>FTE</u>
Administrators	
Vice Principal, Elementary School	1.00
Vice Principal, High School	3.50
Curriculum Coordinator	1.00
Subtotal	5.50
Non-Administrative Certificated Services	
Science	4.00
Social Science	5.40
Physical Education	2.00
Agriculture	0.67
Chinese	0.40
Computers/Technology	0.67
German	0.20
Music	0.80
Librarian	4.00
Subtotal	18.14
<u>Total FTE</u>	<u>23.64</u>

8. In December of 2007, the District sent letters to each credentialed employee. The letters set forth the employees' seniority date and credential information recorded with the District. In pertinent part, the letter stated:

Human Resources is currently in the process of reviewing employee information in our computer system. This information is used to generate reports for the district to contact employees and to ensure credential information, status and seniority date are accurate. The seniority date is your date of hire or your return date if you resigned

and were later rehired. It reflects continual contractual employment with San Juan, without a break in contractual service. This data will be used to determine rights in the event of board reductions or layoffs.

The letter requests that the employee review the information therein for any incorrect data and respond if there are errors. The letter directs the employee to return the letter with any corrections by January 25, 2008, or Human Resources will assume that the information provided therein is correct.

9. The Human Resources Department incorporated any new or changed information received on the returned letters into its computer records, and on February 21, 2008, generated seniority lists organized by seniority date and alphabetically by last name of the teacher. A separate list was created for administrators.

10. On February 27, 2008, Mr. Graser advised all teachers by e-mail that the District had developed a list of all teachers showing seniority date, employment status, and credentials held. The e-mail advised that the lists are provided in alphabetical order and also in order of seniority and may be viewed in the district office lobby during normal work hours. The e-mail advised that duplicate copies of both listings were provided to the San Juan Teachers Association. The e-mail concluded with "you are welcome and encouraged to review these lists to ensure the accuracy of your information."

11. On April 15, 2008, the District created individual lists of persons occupying the positions affected by reduction in FTEs. An individual list was created for each of the PKs: vice principles of elementary schools; vice principals of high schools; curriculum coordinator; science; social science; physical education; foreign language; agriculture; Chinese; computers/technology; German; music; and library. The most junior employees providing these services were identified, and where necessary, tie-breaking criteria were applied to those with the same seniority date to determine the order of layoff. The credentials of those subject to layoff were reviewed to determine whether those subject to layoff could bump into a position held by a junior teacher.

12. All respondents in this action are classified as probationary certificated employees. There are no administrators among the respondents.

JAKOB BLACKWELL

13. Jakob Blackwell holds a single-subject credential in social science with an English-language authorization. He presently teaches seventh and eighth grade history (.67 FTE) and explorer (.33) classes. Pursuant to the reduction in force, his FTE was reduced to .67. He was "bumped" out of the .33 position by Anne Varinelli (seniority date April 25,

2007). Mr. Blackwell was employed by the District on August 24, 2007,¹ under a "DAY-TO-DAY CONTRACT" (day-to-day contract). This contract states in pertinent part:

The San Juan Unified School District is pleased to offer you a temporary contract to serve as a classroom teacher on a day to day temporary basis during the first three months of the school year, while the district determines its ongoing need for additional classrooms, based on student enrollment and assignment of students to classes.

On September 28, 2007, the District offered Mr. Blackwell employment as a temporary employee during the 2007-08 school year. According to the temporary contract, his services in a temporary position began August 24, 2007, and ended June 6, 2008. Thus, the District designated Mr. Blackwell a temporary employee retroactive to the date he began working on a day-to-day contract.

In January and February 2008, the District went through the process described below (Factual Finding 24), whereby it selected temporary employees and designated them as probationary (the selection process). Mr. Blackwell was made probationary pursuant to the selection process, effective March 7, 2008. The District assigned him a seniority date of March 7, 2008.

ERIN CIRIMELE

14. Ms. Cirimele holds a single-subject credential in social science with an English-language authorization and has passed an examination to teach English. She teaches 1 FTE English in the seventh and eighth grades. She was selected for layoff after tie-breaking criteria were applied to those assigned to teach English classes and who held the same seniority date. Ms. Cirimele was hired by the District on August 16, 2007. It is unclear whether she was hired as a temporary teacher or under a day-to-day contract. Pursuant to the selection process, Ms. Cirimele was made probationary effective March 12, 2008, and the District assigned her this seniority date.

TIMOTHY GAGER

15. Mr. Gager holds a single-subject credential in mathematics and a single-subject credential in biological sciences with an English-language authorization. He teaches 1 FTE high school psychology, math, and integrated science. His position is reduced to .50 FTE pursuant to being "bumped" by senior teachers Susan Sloan (seniority date January 27, 2003) and by Anne Varanelli (seniority date April 25, 2007) and after prevailing on application of tie-breaking criteria. Mr. Gager was hired by the District on August 17, 2007. It is unclear whether he was hired as a temporary teacher or under a day-to-day contract.

¹ Mr. Blackwell maintains that he actually began working on August 23, 2007. However, his first date of the paid service was proven to be August 24, 2007.

Pursuant to the selection process, Mr. Gager was made probationary effective March 12, 2008, and the District assigned him this seniority date.

CHRIS LENZ

16. Ms. Lenz holds a single-subject credential in social science with an English-language authorization. She teaches 1 FTE high school world history and U.S. history. Her position is eliminated pursuant to the reduction in force. Ms. Lenz was hired by the District on a day-to-day contract on August 17, 2007. On September 28, 2007, the District offered Ms. Lenz employment as a temporary employee during the 2007-08 school year. According to the temporary contract, her services in a temporary position began August 20, 2007, and ended June 6, 2008. Thus, the District designated Ms. Lenz a temporary employee retroactive to three days after the date she began working on a day-to-day contract. Pursuant to the selection process, Ms. Lenz was made probationary effective March 12, 2008, and the District assigned her this seniority date.

SHANNON LOPEZ

17. Ms. Lopez holds a single-subject credential in English with an English-language authorization. She teaches 1 FTE high school English. Her position is eliminated pursuant to the reduction in force. The District hired Ms. Lopez on August 16, 2007. It is unclear whether she was hired as a temporary teacher or under a day-to-day contract. Pursuant to the selection process, Ms. Lopez was made probationary effective March 12, 2008, and the District assigned her this seniority date.

MARTIN McCrory

18. Mr. McCrory holds a single-subject credential in Physical Education and an English-language authorization. He teaches 1 FTE seventh and eight grade physical education and adaptive physical education. His position is reduced by .60 FTE as he was "bumped" by Greg Deal who holds a seniority date of March 10, 2008. His position was further reduced .20 FTE pursuant to application of tie-breaking criteria. The District hired Mr. McCrory on August 17, 2007 under a day-to-day contract. On September 5, 2007, the District offered Mr. McCrory employment as a temporary employee during the 2007-08 school year. According to the temporary contract, his services in a temporary position began August 17, 2007, and ended June 6, 2008. Thus, the District designated Mr. McCrory a temporary employee retroactive to the date he began working on a day-to-day contract. Pursuant to the selection process, Mr. McCrory was made probationary effective March 12, 2008, and the District assigned him this seniority date.

MATTHEW MILLS

19. Mr. Mills holds a single-subject credential in social science and an English-language authorization. He teaches high school 1 FTE in world history and freshman foundation. His position is reduced by .33 FTE as he was "bumped" by Tima Burgess who

holds a seniority date of April 26, 2007. The District hired Mr. Mills on September 7, 2006. It is unclear whether he was hired as a temporary teacher or under a day-to-day contract. However, the District stipulated that Mr. Mills was hired as a temporary employee, with his first date of paid service on September 7, 2006. The District assigned Mr. Mills a seniority date of August 16, 2007 as his first date of paid service as a probationary employee. There was no evidence of when he was assigned this date. There was no evidence of whether he was assigned this date pursuant to the selection process described below, or earlier. There was no argument made on his behalf that Mr. Mills was improperly hired as a temporary employee in violation of the Education Code.

ERICA OSWALD

20. Ms. Oswald holds a single-subject credential in Biological Sciences with a specialization in geosciences and an English-language authorization. She teaches high school 1 FTE in biology and earth sciences. She is bumped out of her position .20 FTE by Sara Holbrook (seniority date April 25, 2007), Anne Varanelli .40 FTE (seniority date April 25, 2007), and .40 FTE by Donald Zschokke (seniority date April 25, 2007).

The District hired Ms. Oswald on August 16, 2007. It is unclear whether she was hired under a day-to-day or temporary contract. Pursuant to the selection process, Ms. Oswald was made probationary effective March 12, 2008, and the District assigned her this seniority date.

BREANNA PARKER

21. Ms. Parker holds a single-subject credential in Physical Education with an English-language authorization. She teaches seventh and eighth grade 1 FTE in physical education and adaptive physical education. She is bumped .60 FTE out of her position: .20 FTE by Jay Stare (seniority date May 23, 2007); .40 FTE by Greg Deal (seniority date March 10, 2008). She retained .20 FTE of her position pursuant to a tie-breaker.

The District hired Ms. Parker on August 16, 2007. It is unclear whether she was hired under a day-to-day or temporary contract. Pursuant to the selection process, Ms. Parker was made probationary effective March 12, 2008, and the District assigned her this seniority date.

JODEE THOMPSON

22. Ms. Thompson holds a single-subject credential in English with an English-language authorization. She teaches high school 1 FTE in English. She is bumped out of her position by .23 FTE by Christina Schlatter (seniority date March 7, 2008). Pursuant to a tie-breaker .40 FTE of the remaining FTE was eliminated, and she retained .37 FTE.

The District hired Ms. Parker on August 16, 2007. It is unclear whether she was hired under a day-to-day or temporary contract. Pursuant to the selection process, Ms. Parker was made probationary effective March 12, 2008, and the District assigned her this seniority date.

PHOUNG TRAN

23. Ms. Tran holds a single-subject credential in social science with an English-language authorization. She teaches high school 1 FTE: .67 FTE in world history and .33 FTE in AVID. She is bumped out of her position by .33 FTE by a senior employee, Sarah Gibson (seniority date August 4, 2005). She retains .67 FTE. The District hired Ms. Tran on January 16, 2007, as a student teacher teaching one class while she was working on her credential. She was hired as a probationary teacher on August 16, 2007. The contract set forth the date of August 16, 2007 as the first date of paid employment. She maintains that her first date of service was actually August 15, 2007, as the District required her to come to work on that day. Because her first date of paid service in a probationary position was August 16, 2007, this is her seniority date.

CALCULATION OF SENIORITY DATES FOR PROBATIONARY EMPLOYEES FIRST RENDERING SERVICE AS TEMPORARY

24. In February of 2008, the District performed a yearly audit to determine the number of temporary teachers employed and the number of teachers who were on leaves of absence. The audit disclosed that there were approximately 79 teachers on leaves of absence as of February 2008. There were approximately 182 certificated employees in temporary classifications. The District determined that there were approximately 106 temporary certificated employees in excess of the number of teachers on leave at the time. The District then selected 106 temporary employees, on a merit basis and according to District need, and moved them to probationary status. The District assigned these new probationary employees starting dates of March 7, 2008, March 10, 2008 or March 12, 2008, depending upon which school employed the teacher. These starting dates were designated as the employees' seniority dates.

25. Nine of the 11 respondents (Tran and Mills excepted) were initially hired on temporary or day-to-day contracts. Ultimately, all nine were hired in temporary status prior to being selected for probationary status. These nine respondents maintain that they were misclassified as temporary employees because, at the time they were hired, they did not fit any of the criteria for classifications as temporary employees set forth in the Education Code. Thus, they maintain that according to the Education Code they should have been classified as probationary employees as of the date of their hire. If they had been classified as probationary employees as of the date of their hire, their seniority dates would predate those dates that were used to determine their seniority for layoff purposes.

The principal issue these respondents raise is whether some or all of the respondents classified by the District as temporary employees properly should have been classified instead as probationary. If so, the effect, if any, of this misclassification on the elimination or reduction of their services must be determined.

26. In the recent case of *Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal. App. 4th 1260 (*Bakersfield*), the Appellate Court addressed the issue of whether the District's practice of classifying teachers as temporary employees, because they held something less than a preliminary or professional (clear) credential, violated the Education Code.² The Court's holding is instructive here.

The Court held that the District could classify as temporary only those employees who, by virtue of the position they occupied or the manner of service they performed, were defined or described as temporary employees in the Education Code. All certificated employees who were not classified as temporary employees under the Education Code, and who were not properly classified under the Education Code as permanent or substitute employees, had to be classified as probationary employees under Education Code section 44915, and had to be accorded the rights of probationary employees as provided in the Code.³

The *Bakersfield* Court identified the circumstances under which a District could properly classify an employee as temporary under the Education Code. "The Education Code recognizes two general kinds of temporary employees: those who are employed to serve for less than three or four months, or in some types of limited, emergency, or temporary assignments or classes (Ed. Code, §§ 44919, 44921, 44986); and those who are employed for up to one year to replace a certificated employee who is on leave or has a lengthy illness (Ed. Code, §§ 44920, 44918). In addition, persons employed in categorically funded programs or in programs operated by a District under contract are treated like temporary employees in certain respects (Ed. Code, § 44909) as are persons employed as substitute teachers (Ed. Code, § 44917)." (*Bakersfield, supra*, 145 Cal. App. 4th at p. 1281.)

The *Bakersfield* court held that the Education Code does not grant school districts discretion to deviate from this statutory classification scheme, and section 44915 makes probationary status the default classification for certificated employees who are not otherwise required by the Education Code to be classified as permanent, substitute, or temporary employees. (Citing *Eureka Teacher's Assn. v. Board of Education* (1988) 202 Cal. App. 3d 469, 474 [school district's control over teacher classification ends where the rights afforded teachers by the Code begins].)

27. In the matter before us, three certificated employees (Jakob Blackwell, Chris Lenz and Martin McCrory) were initially hired on a day-to-day contract, which specifically stated that they were retained on a day-to-day temporary basis during the first three months of the school year, while the District determined its ongoing need for additional classrooms, based on student enrollment and assignment of students to classes.

²All statutory references are to the California Education Code unless otherwise indicated.

³Including the right to accrue seniority under Education Code section 44845, and the rights to notice and a hearing in the event of a workforce reduction under Education Code sections 44949 and 44955.

Section 44919 provides in pertinent part:

(a) Governing boards of school districts shall classify as temporary employees those persons requiring certification qualifications, other than substitute employees, who are employed to serve from day to day during the first three school months of any school term to teach temporary classes not to exist after the first three school months of any school term or to perform any other duties which do not last longer than the first three school months of any school term, or to teach in special day and evening classes for adults or in schools of migratory population for not more than four school months of any school term. *If the classes or duties continue beyond the first three school months of any school term* or four school months for special day and evening classes for adults, or schools for migratory population, the certificated employee, unless a permanent employee, *shall be classified as a probationary employee.*⁴ The school year may be divided into not more than two school terms for the purposes of this section.

28. Pursuant to section 44919, after the first three months of the school term Jakob Blackwell, Chris Lenz and Martin McCrory, if they were to be retained, were to be retained as probationary employees. These three continued teaching their assignments past the third month of the semester. The District failed to adhere to the mandate of section 44919 when, instead of classifying these day-to-day employees as probationary upon the fourth month of their employment, it classified them as temporary in September.

29. Pursuant to section 44920, "the governing board of a school district may employ as a teacher, for a complete school year, but not less than one semester during a school year unless the date of rendering first paid service begins during the second semester and prior to March 15th, any person holding appropriate certification documents, and may classify such person as a temporary employee. *The employment of such persons shall be based upon the need for additional certificated employees during a particular semester or year because a certificated employee has been granted leave for a semester or year, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board.*"⁵ Section 44920 specifies that temporary employees are only to be hired if there are long-term vacancies due to a teacher's leave of absence. (*Melanie Welch v. Oakland Unified School District, and Mark Petrofsky v Oakland Unified School District* (2001) 91 Cal. App. 4th 1421, 1431-1432.)

⁴ Emphasis added.

⁵ Emphasis added.

30. In the matter before us, six of the respondents (Phoung Tran and Matthew Mills excepted) were initially hired as temporary employees at the beginning of the 2007-08 school year. The District did not conduct an audit to determine the number of certificated employees granted leave for a semester or year, or teachers on leave due to long-term illness, until February 2008. No accounting was made at the beginning of the 2007-08 school year to determine how many certificated employees were on leave and how many certificated employees should be hired as temporary employees to replace those on leave. Nor was there evidence that the District relied upon a prior year's audit in determining how many temporary teachers to hire in 2007-08.

31. It is clear that an audit or an accounting of teachers on leave at any given time is a complex task in a District this size. The District has over 42,000 students, over 2,000 certificated employees, and approximately 70 schools. However, section 44920 directs that a District may employ no more long-term replacement teachers than it has permanent or probationary teachers absent on leave at any one time. (*Bakersfield*, *supra*, 145 Cal. App. 4th at p. 1281.) It is not necessary to maintain strict mathematical correspondence at any given time between the number of teachers on leave and the number of temporary teachers hired. And, section 44920 does not require that Districts assign a temporary teacher to a classroom of a particular permanent or probationary teacher whose absence (due to leave or illness) has necessitated the hiring of the temporary teacher. (*Gloria Paulis v. Board Of Trustees Of Sequoia Union High School District* (1976) 64 Cal. App. 3d 59, 63.) But, a mid-school-year excess of 106 temporary teachers over teachers on leave suggests that the District did not make an effort at the commencement of the school year to ascertain the number of teachers on leave, and thus, the numbers of certificated employees who could be hired as temporary teachers.

32. The District maintains that respondents have failed to show that at the commencement of the school year there were more temporary teachers hired than there were teachers on leave. However, respondents have demonstrated that non-compliance with section 44920 can be inferred from the excess of temporary teachers in February and from the fact that most new teachers hired in the 2007-08 school year were hired under temporary contracts. Additionally, the inclination of the District to convert day-to-day contracts to temporary contracts, without conducting an audit to determine if more temporary teachers were warranted, supports the inference that the District hired temporary teachers without regard to the number of teachers on leave.

The District has not produced contrary evidence. The District has not provided evidence that the approximately 106 temporary certificated employees in excess of the number of teachers on leave in February 2008 were employed to serve in capacities the Education Code designates as temporary: (1) those employed for less than three or four months, or in some types of limited, emergency, or temporary assignments or classes (sections 44919, 44921 and 44986); (2) those employed for up to one year to replace a certificated employee who is on leave or has a lengthy illness (sections 44920 and 44918); (3) those employees in categorically funded programs or in programs operated by a District under contract who are treated like temporary employees in certain respects (section 44909);

and (4) those employed as substitute teachers (sections 44917). (*Bakersfield*, *supra*, 145 Cal. App. 4th at p. 1281.)

33. The District maintains that even if it erroneously employed more temporary teachers than permitted under the Education Code there is no way to determine whether the respondents herein are included in the number of temporary employees properly hired to replace teachers on leave at the commencement of the school year. In February 2008, approximately 79 teachers were on leave. The inference can properly be drawn that approximately 79 teachers were on leave at the commencement of the school year. Thus, it appears the District is maintaining that the nine respondents hired as temporary and day-to-day teachers could have been temporary in that they were replacing some of the approximately 79 teachers on leave at the commencement of the school year.

Clearly, the District's failure to properly account for teachers on leave at the commencement of the school year has made it impossible for respondents to ascertain whether they were hired to replace one of the approximately 79 teachers on leave. The burden is on the District to show which teachers were hired to replace teachers on leave. The District has not met this burden. Additionally, the District designated these nine respondents as part of the 106 excess temporary employees on staff in February 2008, and made them probationary. The District has thus conceded that these employees were not filling in for teachers on leave in February. The inference can properly be drawn that neither were these employees filling in for teachers on leave at the outset of the school year.

34. Because temporary employees are not guaranteed procedural due process by statute, temporary classifications are narrowly defined by the Legislature and should be strictly interpreted. (*Balen v. Peralta Junior College Dist.*(1974) 11 Cal.3d 821, 826). Thus, section 44920 is narrowly construed to require that the employment of temporary employees be based upon the need for additional certificated employees during a particular semester or year and the need must be determined at the time of employment of the temporary persons. The District's wholesale hiring of temporary employees to meet a perceived or unsubstantiated need, subject to audit and correction a semester later, deprives misclassified temporary employees of the rights they would be accorded as probationary employees.

35. In summary, employees, Jakob Blackwell, Chris Lenz and Martin McCrory became probationary employees when the District converted their day-to-day contracts to temporary contracts. The temporary contracts designated the first dates of paid service in the temporary position. As these employees were not filling any positions that the Education Code permits temporary classification, these employees became probationary employees on the dates they were first hired as "temporary." Thus, Jakob Blackwell became a probationary employee on August 24, 2007, Chris Lenz became a probationary employee on August 20, 2007, and Martin McCrory became a probationary employee on August 17, 2007.

36. In respect to the remaining respondents (except Phoung Tran and Matthew Mills), they became probationary employees on their first day of paid service under

temporary contracts: Erin Cirimele on August 16, 2007; Timothy Gager on August 17, 2007; Shannon Lopez on August 17, 2007; Erica Oswald on August 16, 2007; Breanna Parker on August 16, 2007; and Jodee Thompson on August 16, 2007.

37. Because of their misclassifications as temporary employees, the seniority dates of Blackwell, Cirimele, Gager, Lenz, Lopez, McCrory, Oswald, Parker and Thompson were incorrect when the District formulated its seniority lists and applied its tie-breaking criteria. Therefore, the order in which these respondents were laid off relative to the District's other probationary employees was incorrect. The evidence presented at hearing did not equip the Administrative Law Judge with the means to determine the relative seniority of these respondents among the remaining probationary employees. Therefore, to avoid retaining junior certificated employees in violation of section 44955, the layoff notices issued to these respondents must be rescinded.⁶

38. As set forth above, Phuong Tran was hired as a probationary employee. She has a seniority date of August 16, 2007. There is no evidence that she was initially misclassified as a temporary employee. Ms. Tran holds a single-subject credential in social science with an English-language authorization. She teaches high school 1 FTE : .67 FTE in world history and .33 FTE in AVID. She is affected by the Board Resolution to eliminate 5.40 FTE in social science. She is bumped out of her position by .33 FTE by a senior employee, Sarah Gibson (seniority date August 4, 2005). She retains .67 FTE. The District did not retain a junior employee to render service which Ms. Tran is certificated to render.

39. Matthew Mills was hired as a temporary employee on September 7, 2006, and made probationary on August 16, 2007. There is no evidence that he was initially misclassified as a temporary employee. (He was hired a year prior to the remaining group of respondents.) Mr. Mills holds a single-subject credential in social science and an English-language authorization. He teaches high school 1 FTE in world history and freshman foundation. His position is reduced by .33 FTE as he was "bumped" by Tima Burgess who holds a seniority date of April 26, 2007. He retains .67 FTE. The District did not retain a junior employee to render service which Mr. Mills is certificated to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955. All notices and other jurisdictional requirements of those sections have been met.

2. Cause exists for the reduction or discontinuation of the particular kinds of services and of 23.64 FTE certificated positions at the end of the 2007-2008 school year, pursuant to Education Code sections 44949 and 44955.

⁶ The remaining issues raised by these respondents are not addressed herein, as their layoff notices must be rescinded due to their misclassification as temporary employees.

3. The services identified in the Governing Board Resolution are particular kinds of services that can be reduced under Education Code section 44955. The Governing Board's decision to reduce the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

4. The reduction of the particular kinds of services and the resultant reduction in 23.64 FTE certificated positions was done for the welfare of the District and the pupils. The decision was made because of factors affecting the District budget for the ensuing school year, including the state budget crisis with the resultant possible loss of revenue from the state.

5. By reason of the facts set forth in the Factual Findings and Discussion 1 through 37, the layoff notices sent to respondents Jakob Blackwell, Erin Cirimele, Timothy Gager, Chris Lenz, Shannon Lopez, Martin McCrory, Erica Oswald, Breanna Parker and Jodee Thompson must be rescinded in order to avoid retention of junior employees to perform services which these respondents are certificated and competent to render.

6. As set forth in Factual Findings and Discussion 38 and 39, Phuong Tran and Matthew Mills were properly served with layoff notices advising them that their services would be reduced .33 FTE. No employees junior to Phuong Tran and Matthew Mills were retained to perform .33 FTE services that these respondents are certificated and competent to render.

RECOMMENDATIONS

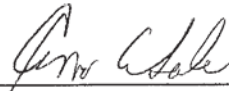
1. The layoff notices sent to respondents Jakob Blackwell, Erin Cirimele, Timothy Gager, Chris Lenz, Shannon Lopez, Martin McCrory, Erica Oswald, Breanna Parker and Jodee Thompson shall be rescinded.

2. The Accusation against respondents Jakob Blackwell, Erin Cirimele, Timothy Gager, Chris Lenz, Shannon Lopez, Martin McCrory, Erica Oswald, Breanna Parker and Jodee Thompson shall be dismissed.

3. Notice shall be given to Phoung Tran that her services will be reduced by .33 FTE in the 2008-09 school year.

4. Notice shall be given to Matthew Mills that his services will be reduced by .33 FTE in the 2008-09 school year.

Dated: May 6, 2008



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings