

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

In The Matter of the Accusations against:

PATTY JONES, SUZANNE FRANCIS,  
LANE BLEDSOE, GERALDINE  
CLAYTON, JOHN F. WORTMAN,  
SANDRA MOORE, ANGELA SENOR,  
KATRINA STEARNS, SARAH ANGLE,  
and TIMOTHY HULL,

Respondents.

OAH No. N2007030618

**PROPOSED DECISION**

Trevor Skarda, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 13, 2007, in Biggs, California.

Roman J. Muñoz, Attorney at Law, of Kronick Moskowitz Tiedemann & Girard, represented the Biggs Unified School District.

Lesley Beth Curtis, Attorney at Law, of Langenkamp & Curtis, represented all of the respondents to the extent that their interests did not conflict. All respondents represented themselves to the extent that their interests conflicted.

The matter proceeded in respect to the Lay Off Notices issued to Patty Jones, Suzanne Francis, Lane Bledsoe, Geraldine Clayton, John F. Wortman, Sandra Moore, Angela Senior, Katrina Stearns, Sarah Angle and Timothy Hull, as these employees had filed Requests For Hearing, been issued Accusations, and had filed through Langenkamp & Curtis Notices of Defense to the Accusation.

The matter was submitted and the record closed on April 13, 2007.

## FACTUAL FINDINGS

1. The Biggs Unified School District (District) operates two elementary schools, one middle school, one high school, and two Community Day Schools. The District serves approximately 628 non-charter school students. There is one charter school in the District, Oak Hills Academy, which serves approximately 108 students. The charter school teachers are not District employees.

2. Rick Light is the interim Superintendent of the District. His actions, and the actions of the Board, were taken in their official capacities.

3. Before March 15, 2004, the District personally served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that the Board had passed Resolutions reducing the certificated staff by 14 full-time equivalent (FTE) positions.

4. Respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

5. The interim Superintendent made and filed Accusations against each of the employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense were served on those employees. The notices of hearing, however, were not served in a timely manner pursuant to Government Code, section 11509, and respondents moved to dismiss the Accusations. Respondents stipulated that they were not prejudiced by the District's untimely service. Because respondents were not prejudiced by the untimely service of the notices of hearing, the motion was denied. (Ed. Code, § 44949, subd. (c)(3).)

6. Respondents timely filed Notices of Defense.

7. Respondents in this proceeding are permanent or probationary certificated employees of the District.

8. On March 7, 2007, at a meeting of the District's Board of Trustees (Governing Board), the Governing Board of the District was given notice of the Superintendent's recommendations that certificated and other employees holding 14 FTE positions be given notice that their services would not be required for the next school year and stating the reasons for that recommendation.



9. On March 7, 2007, the Board adopted Resolution No. 2006/07 #9, providing for the reduction or elimination of the following particular kinds of services, and to decrease a corresponding number of certificated employees in the District, as follows:

- A. Reduce 1.0 FTE high school vice principal.
- B. Reduce 3.0 FTE K-8 multiple subject teachers, District-wide.
- C. Reduce 1.0 FTE grades 6-8 Mathematics, Science, and Physical Education teacher, District-wide.
- D. Reduce 1.0 FTE grades 6-8 Mathematics, Science, English, Social Science, and Electives teacher, District-wide.
- E. Reduce 1.0 FTE grades 6-8 English and Social Science teacher, District-wide.
- F. Reduce 1.0 FTE grades 9-12 Spanish teacher, District-wide.
- G. Reduce 1.0 FTE grades K-12 Music teacher, District-wide.
- H. Reduce 1.0 FTE grades 9-12 Home Economics teacher (Career Skills, Arts/Crafts, Home Arts, Electives), District-wide.
- I. Reduce 1.0 FTE grades 9-12 Social Science teacher, District-wide.
- J. Reduce 1.0 FTE grades 6-8 English, Social Science, and Physical Education teacher, District-wide.
- K. Reduce 1.0 FTE grades 9-12 Education Specialist (RSP) teacher, District-wide.
- L. Reduce 1.0 FTE grades K-8 Education Specialist teacher, District-wide.

10. On March 7, 2007, the Board also adopted Resolution No. 2006/07 #10, in which 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 criteria include credentialing, experience, education, performance, certificates, District service, and No Child Left Behind (NCLB) highly-qualified status.

11. The District is in a state of financial crisis caused by litigation, declining enrollment and lawsuit settlements. Regarding enrollment, the District has experienced a precipitous drop in non-charter school enrollment over the past several years. The non-charter school enrollment as measured by the average daily attendance (ADA) was 816.98 students during the 2001-2002 school year. The estimated non-charter school ADA for the current (2006-2007) school year is 628 students. The non-charter school ADA is expected to decline further during the 2007-2008 school year. Because the non-charter school ADA determines the amount of funding the district receives, the decline in non-charter school ADA must be followed by a corresponding cut in expenditures. Thus, the Governing Board resolved to reduce teaching services, affecting employment of 14 FTE teaching positions and a total of 13 employees.<sup>1</sup> The Board's resolution to eliminate and reduce teaching services was made in order to balance its budget for the welfare of students.

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<sup>1</sup> One of the employees who received a layoff notice was both a vice principal and a high school Spanish teacher and represented 2.0 FTE.



12. Superintendent Light and other District employees, in particular administrative assistant and personnel specialist Judy Jennings, were responsible for implementation of the technical aspects of the layoff. Mr. Light testified that he relied heavily on Judy Jennings because he is new to the District.

13. The District maintains a Certificated Seniority List which contains employees' seniority dates (first date of service), status as tenured, probationary or temporary, and credentials, authorizations and No Child Left Behind "highly qualified" status. Status, credential and authorization data are obtained from the District's records. The District circulated a seniority list in anticipation of issuing layoff notices.

14. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees and developed a "bumping chart." In determining who would be laid off for each kind of affected service, the District determined the impact on staff in inverse order of seniority. The District checked the credentials of affected individuals to determine whether they could "bump" other employees who were junior to them. The District then looked at employee competence for certain positions as opposed to other positions.

15. 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. The parties stipulated that Lindsey Roffey, a high school special education teacher, had resigned on or about April 9, 2007. Because of Ms. Roffey's resignation, the District withdrew its Accusation against Angela Senor.

16. The parties stipulated that respondents Sarah Angle and Katrina Stearns are probationary employees.

*MAY THE DISTRICT LAY OFF SENIOR TEACHERS GERALDINE CLAYTON, LANE BLEDSOE, PATTY JONES AND SUZANNE FRANCIS, WHILE RETAINING LESS SENIOR TEACHERS WHO TEACH AT THE DISTRICT'S COMMUNITY DAY SCHOOLS?*

17. Scott Gates is currently assigned to teach Community Day School (CDS). He has taught CDS continuously since 2004. The District did not serve Mr. Gates with a layoff notice and seeks to retain ("skip") Mr. Gates. Mr. Gates' first day of service was May 1, 2002. He holds Clear Multiple Subject and CLAD credentials.

18. Vince Sormano is currently assigned as a secondary Community Day School teacher. Mr. Sormano's first day of service is October 17, 2001. The District did not serve Mr. Sormano with a layoff notice and seeks to skip him. Mr. Sormano possesses clear single Social Science and CLAD credentials Single Subject Social Science, and has been working at CDS for several years.



19. Respondents Geraldine Clayton, Lane Bledsoe, Patty Jones and Suzanne Francis are senior to Mr. Gates and Mr. Sermano. They maintain that they can bump Mr. Gates and/or Mr. Sermano. The District maintains that no employee, except Mr. Gates and Mr. Sorman, is qualified and competent to teach CDS and that the District has a specific need to retain Mr. Gates and Mr. Sermano.

20. CDS classrooms are self contained with a class size of less than 10 students covering grades 4 through 12. CDS was established to provide classroom instruction to students with behavioral problems who have been expelled, who are about to be expelled, or who cannot otherwise function in the regular classroom.

21. Superintendent Light testified persuasively that a CDS teacher requires specialized training and experience. CDS teachers must possess a special set of skills and knowledge not usually provided in the credentialing process. CDS teachers must have a background in psychology or sociology. They require experience and training working with students with extreme behavioral problems, including behavioral modification techniques and crisis intervention. The CDS teacher also requires training and experience working with persons with behavioral problems which stem from disabilities.

22. Board Resolution No. 2006/07 #9, states, in relevant part, that with respect to that resolution, "competency" means "at least one semester actual teaching experience in alternative education within the last five years."

23. Vincent Sorman and Scott Gates possess the special training and experience necessary to teach at CDS. The District has a specific need to retain their services.

24. There was no evidence that Geraldine Clayton possesses the special training and experience necessary to teach at CDS.

25. Lane Bledsoe lacks the special training and experience necessary to teach CDS. Mr. Bledsoe holds a Clear Single Subject Teaching Credential, with supplemental authorizations in Introductory English and Introductory Social Science. While he taught at CDS for one semester 12 years ago, and before that, he worked with at-risk students for a brief period, he has no recent experience teaching in alternative education. He has no recent coursework in sociology and/or psychology, although he obtained some units in his credentialing program. Mr. Bledsoe has had minimal crisis intervention and anger management training.

26. Patty Jones lacks the special training and experience necessary to teach at CDS. She has a Clear Multiple Subject credential and a Crosscultural, Language & Academic Development (CLAD) certificate. Ms. Jones has no experience teaching in alternative education. While she has been the lead disciplinarian at Richvale Elementary for the past four years, she has very limited training regarding crisis intervention and/or working with troubled youth.

27. Suzanne Francis lacks the special training and experience necessary to teach at CDS. She has a Clear Multiple Subject credential and a CLAD certificate. Ms. Francis has no experience teaching in alternative education, no experience working with troubled youth, minimal training regarding anger management and minimal crisis intervention training.

28. There is no respondent who possesses the unique qualifications and competency to teach at CDS.

*APPLICATION OF THE TIE BREAKER CRITERIA FOR TEACHERS WHO FIRST SERVED THE DISTRICT ON AUGUST 27, 2001*

29. The District applied the tie-breaking criteria for employees whose first date of services was August 27, 2001. After application of the tie-breaking criteria, the District determined that seniority of those teachers was as follows: (1) Timothy Hull, (2) Angela Senor, (3) Katrina Stearns, (4) Sarah Angle, and (5) Amanda Ramirez.

30. There was no persuasive evidence that the tie-breaking criteria were applied inappropriately as to the above-listed individuals.

*APPLICATION OF THE TIE BREAKER CRITERIA FOR TEACHERS WHO FIRST SERVED THE DISTRICT ON AUGUST 26, 1998*

31. The District failed to apply the tie-breaking criteria for Lane Bledsoe and Vera Withrow until the due process hearing. Their seniority date is August 26, 1998. Ms. Withrow was not issued a layoff notice.

32. Superintendent Light applied the tie-breaker criteria at the hearing. His testimony established that Ms. Withrow is senior to Mr. Bledsoe, primarily because Ms. Withrow has Clear Multi Subject credential and a CLAD certificate. She is therefore more versatile than Mr. Bledsoe, who has a single subject credential.

33. There was no persuasive evidence that the tie-breaking criteria were applied inappropriately as to the above-listed individuals.

34. There was no evidence that respondent Bledsoe requested that the District provide him with a written statement of how the tie-breaker criteria had been applied with regard to respondent Bledsoe and Ms. Withrow.



*ELIMINATION OF 1.0 FTE OF MUSIC TEACHER DISTRICT-WIDE AND OF 1.0 FTE OF HOME ECONOMICS TEACHER DISTRICT-WIDE*

35. Respondent John Wortman is the only music teacher in the District. He teaches music to all students, grades K-12. Geraldine Clayton teaches, in pertinent part, Home Economics to high school students.

36. There was no evidence that the Governing Board's decision to eliminate the particular kinds of services of music and home economics was arbitrary or capricious.

37. There was no evidence that the Governing Board's decision to reduce the particular kinds of services of music and home economics will cause it to reduce its offerings in code mandated courses below the level required by law.

LEGAL CONCLUSIONS AND DISCUSSION

1. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met.

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction." The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Governing Board's decisions were a proper exercise of its discretion.

3. The services identified in Board Resolution No. 2006/07 #9 are particular kinds of services that could be reduced or discontinued under section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

4. A District may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)



5. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen*, supra, 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838; see, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

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

7. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) 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. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers v. Governing Board*, supra, 116 Cal.App.3d 831.)

8. The District may deviate from terminating certificated employees in order of seniority, pursuant to Education Code section 44955, subdivision (d).<sup>2</sup> The District must prove that it has a specific need for personnel to teach a specific course and that certificated employees it seeks to retain have special training and experience necessary to teach that course of study, which others with more seniority do not possess. The District has met this burden; no respondent possesses the special training and experience necessary to teach at the Community Day Schools. The District has a specific need to retain Scott Gates and Vince Sermano because they possess the special training and experience necessary to teach at the Community Day Schools.

9. Services reduced below the level mandated by law are not "particular kinds of services" under Education Code section 44955. So long as a school district does not reduce its offerings in a code mandated course below the level required by law, that reduction

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<sup>2</sup> Education Code section 44955, subdivision (d) states:

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.



should be considered a reduction of a particular kind of service. (*Degener v. Governing Board*, supra, 67 Cal.App.3d 689.)

10. Applied arts and visual and performing arts are two of several mandated subject areas which must be provided to high school students pursuant to Education Code section 51220, subdivisions (g) and (h). Music is a performing art. Home economics (homemaking education) is an applied art.

11. It was not established that the District will reduce its course offerings below mandated levels by reducing 1.0 FTE of music District-wide and 1.0 FTE of home economics District-wide.

12. Education Code section 44955, subdivision (b) states, in relevant part, as follows:

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.

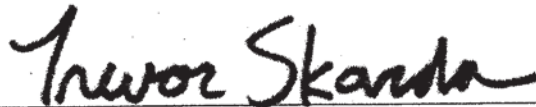
13. The District's application of the tie breaking criteria as to all affected respondents was appropriate.

ORDER

1. Notice shall be given to employees occupying 13 full-time equivalent certificated positions that their services will not be required for the 2007-2008 school year because of the reduction and discontinuance of particular kinds of services, including the following respondents: Patty Jones, Suzanne Francis, Lane Bledsoe, Geraldine Clayton, John F. Wortman, Sandra Moore, Katrina Stearns, Sarah Angle and Timothy Hull

2. The Accusation against Angela Senor is dismissed.

DATED: May 3, 2007

A handwritten signature in black ink that reads "Trevor Skarda". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

TREVOR SKARDA  
Administrative Law Judge  
Office of Administrative Hearings