

BEFORE THE
GOVERNING BOARD
MOUNTAIN VIEW SCHOOL DISTRICT

In the Matter of the Accusations Against:

Certificated Employees of the Mountain View
School District,

Respondents.

OAH Case No. 2011030281

PROPOSED DECISION

Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 25, 2011, in El Monte, California. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Margaret A. Chidester, Esq., Law Offices of Margaret A. Chidester & Associates, represented Gloria Diaz, Assistant Superintendent of Human Resources for the Mountain View School District (District).

Respondents are those identified in Appendix A.¹ Richa Amar, Esq., Rothner, Segall, & Greenstone, represented the Respondents identified in exhibit A.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Ms. Diaz filed the Accusations in her official capacity as Assistant Superintendent of the District.
2. Respondents are certificated employees of the District.
3. Before March 15, 2011, Ms. Diaz provided written notice to the District's Governing Board (Board) and Respondents that the District was recommending the reduction or discontinuation of certain particular kinds of services for the 2011-2012 school year and that Respondents' services therefore would not be required next school year. Respondents timely requested a hearing.

¹ The individuals identified in exhibit 10 had their preliminary layoff notices rescinded and did not appear as Respondents in this matter. Those individuals are therefore not identified in Appendix A.

4. On and after March 16, 2011, the District filed and served Accusations and other required documents on Respondents, who thereafter filed timely notices of defense.

5. The District gave preliminary layoff notices to a greater number of certificated employees than the number of full-time equivalent (FTE) positions subject to layoff, in order to maintain flexibility in the event that some of the decisions made in effectuating the resolution described below (such as the application of seniority dates, tiebreaking criteria, “bumping” and “skipping”) are not sustained in this matter. The District also did so because it has accepted, and will continue to accept, supplemental authorizations obtained by any Respondent after March 15th, which may change their relative seniority. Thus, the following Respondents were identified during the hearing as those to whom the District presently does not anticipate presenting final layoff notices: Santiago (seniority no. 293), Gonzalez (no. 319), Tandon (no. 353), Kurtz (no. 360), Ivey (no. 362), and Greene (no. 364).

The Board's Resolution

6. On March 3, 2011, the Board adopted a Resolution entitled “RESOLUTION OF THE GOVERNING BOARD OF THE MOUNTAIN VIEW SCHOOL DISTRICT REGARDING REDUCTION OR DISCONTINUANCE OF PARTICULAR KINDS OF SERVICE” (Resolution), reducing or discontinuing the following services at the close of the 2010-2011 school year:

(1.1)	47	K-8 Multiple Subject Classroom Teaching Positions (47 FTE)
(1.2)	1	Single Subject Physical Education Teaching Position (1 FTE)
(1.3)	2	Single Subject Math Teaching Positions (2 FTE)
(1.4)	1	Multiple Subject Literacy Coach (1 FTE)
(1.5)	1	Multiple Subject First 5 Literacy Coach (1 FTE)
(1.6)	1	Head Start Literacy Coach (1 FTE)
(1.7)	1	Nurse (1 FTE)
(1.8)	<u>1</u>	<u>Psychologist (1 FTE)</u>

55 TOTAL FTEs

7. The Board took the action to reduce or discontinue the services in question due to the current fiscal uncertainty faced by the District. The fiscal uncertainty has been caused by state budget cuts for the past several years, the anticipated cuts in this year's state education budget, an anticipated decline in student enrollment, and the requirement to retain a reserve of three percent for the next two years as required by the Los Angeles County Office of Education (LACOE). Ms. Diaz estimated that the declining enrollment is attributable to approximately eight of the 55 FTE positions subject to reduction or elimination.

8. The Board also adopted criteria by which to “exempt” certain certificated employees from the order of layoff through seniority “by virtue of their credentials, competence, assignment, experience, or certification.” Exhibit “A” of the Resolution specifies categories of certificated employees the Board seeks to exempt from or “skip.” These categories are (1) certificated employees who possess administrative credentials; (2) certificated employees who possess a credential authorizing service in special education; (3) certificated employees who possess a credential authorizing service as a Newcomer teacher who are presently assigned to the Newcomer program, and who will be assigned to the Newcomer program for the 2011-2012 school year; (4) certificated employees who possess a credential authorizing service in alternative education who are presently assigned to the Magnolia Learning Center within the scope of that credential, and who will be assigned within the scope of that credential for the 2011-2012 school year; (5) certificated employees who possess a credential authorizing service as an English Language Development (ELD) Teacher on Special Assignment (TOSA) who are presently assigned within the scope of that credential, and who will be assigned within the scope of that credential for the 2011-2012 school year; and (6) certificated personnel who have been awarded Endeavor Fellowships with the National Aeronautics and Space Administration (NASA) and are presently working to earn a Certificate in STEM (science, technology, engineering, mathematics) Education.

9. The Board also adopted tiebreaker criteria for determining the relative seniority for employees with the same first date of paid service. Exhibit “B” of the Resolution provides that the order of termination of employees with the same first date of paid service shall be determined by reference to certain tiebreaker criteria and to points assigned to each category of tiebreaker criteria. The Resolution further established a lottery process to be implemented if the tiebreaking criteria did not break all ties between employees with the same first date of paid service. The criteria were not all equally weighted, and points were awarded for each item. The tiebreaking criteria are reasonable as they relate to the skills and qualifications of certificated and probationary employees, and the District properly applied the criteria, with the exception of the circumstance noted below.

10. The District maintains a seniority list which contains employees’ seniority dates (first date of paid service with the District), current assignments and locations, whether an employee is “exempt” from the layoff, the employee’s status as permanent, probationary, temporary, etc., credentials and authorizations, advance degrees, and major areas of study. The seniority list is accurate.

11. The District used the seniority list to determine the least senior employees subject to layoff because they hold positions to be reduced or discontinued. The District next determined whether those employees designated for layoff possess credentials in other areas that would entitle them to “bump” junior employees holding positions that were not included in the particular kinds of services designated for reduction or elimination. The District also used the seniority list to apply the tiebreaking criteria in Exhibit “B” of the Resolution.

12. Before and after the adoption of the Resolution, the District identified vacancies due to attrition, including retirements, deaths, and resignations. In consideration of such attrition, the District has reduced the number of certificated employees required to be terminated pursuant to this proceeding.² Roberta Casato has tendered her resignation and it has been accepted by the Board. She is a Literacy Coach who served in a categorically funded position this school year. Although a multiple subject classroom credentialed teacher could fulfill her position, it is currently unknown whether the school site in question will need a Literacy Coach next school year. Under these circumstances, it was not established by a preponderance of the evidence that the situation regarding Ms. Casato's retirement constitutes positively assured attrition that must result in retaining one of the Respondents possessing a multiple subject classroom teaching credential.

13. After identifying the least senior employees holding the positions subject to layoff and determining if they are able to bump less senior employees with regard to the 47 K-8 Multiple Subject Classroom Teaching Positions, the District ended up proposing to layoff employees holding 47.1 FTEs. The most senior person identified for layoff holding such a position is Respondent Bernadette Dincin (seniority no. 331). She is a full-time employee holding one FTE position with a multiple subject classroom teaching credential. Although the District had only an .9 FTE position left to eliminate when it got to Respondent Dincin on the seniority list, the decision was made to reduce her entire position. Ms. Diaz testified this is because it would be impracticable for an elementary school teacher to hold 10 percent of a position, which is not easily divisible. Ms. Diaz testified that it would result in an absurd situation detrimental to the welfare of the students, in that the teacher in question would teach only one day every two weeks or so.

The AVID Program

14. Respondent Belinda Hyde testified that the Board should have also skipped those involved in the Advancement Via Individual Determination (AVID) program. Respondent Hyde is a qualified AVID elective teacher. AVID is a college-readiness system for grades 4-12. An official from LACOE presented a letter indicating that the AVID program where Respondent Hyde teaches will be in serious jeopardy if she is not retained next school year. There is no question that AVID is an important program. There is also no question that Respondent Hyde is an important part of the AVID program. However, skipping decisions are within the sole purview of a governing board pursuant to Education Code section 44955, subdivision (d). While certificated staff may contest the subject matter of skipping criteria or how it is applied, they do not have standing to request or demand that categories be added.

² A school district is not required to account for circumstances that occur after March 15th when implementing layoff decisions. (*Lewin v. Board of Trustees* (1976) 62 Cal.App.3d 977, 982.)

Reed v. State of California

15. Respondent Nellyann Fernandez-Romero testified that she should be skipped because the turn-over created by successive layoffs at Kranz middle school, where she teaches, will result in the deprivation of those students' constitutional rights to a free and appropriate public education. Respondent Fernandez-Romero testified that the students at Kranz are from a lower income area especially vulnerable to substance abuse and violence. She further noted that the school has been designated as a program improvement school, and that recent test scores have shown improvement. But she fears that this layoff will jeopardize those improvements.

16. Respondent Fernandez-Romero cited the case of *Reed v. State of California*, (Case No. BC 432420, May 13, 2010), in which the Superior Court of the State of California, County of Los Angeles, relying in part on the skipping provision of Education Code section 44955, subdivision (d)(2), granted a preliminary injunction in favor of a group of students to stop the Los Angeles Unified School District (LAUSD) from laying off teachers at three lower income middle schools in the district. In the *Reed* case, each of the three middle schools was ranked in the bottom ten percent of schools in California for academic performance. During the 2009 reduction in force (RIF), LAUSD sent layoff notices to between 46-60 percent of the teachers at those schools. By contrast, LAUSD only sent notices to 17.9 percent of all of its teachers. The layoffs resulted in a large number of teacher vacancies at the three schools in question.

17. The reliance on the *Reed* case is unconvincing for several reasons. First, the *Reed* case is currently on appeal. Since it is not a published appellate decision, the Superior Court's decision is not binding on any school district other than LAUSD. Second, the Superior Court's reliance on Education Code section 44955, subdivision (d)(2), is questionable because that subdivision was probably meant to apply to protect the constitutional rights of certificated staff on the basis of gender, race, etc., and not to protect students or other third parties not directly involved in the layoff process. Third, Education Code section 44955, subdivision (d)(2), provides school districts the exclusive purview of making skipping decisions, not teachers, parents or students. Although in the *Reed* case the Superior Court ordered the LAUSD to make certain skipping decisions by way of injunctive relief, no such court order was obtained in this case, nor does the ALJ here have jurisdiction to make such a decision. Finally, even ignoring the above legal points, it was not established as a factual matter that the layoffs in this case will create the type of damage to the Kranz students' rights to a public education. The significant turn-over problem in *Reed* was due to the fact that a number of itinerant substitute teachers were used to replace the teachers subject to layoff. Here, the District in the past has simply reassigned permanent elementary school teachers with appropriate credentials. Also, it was not established that the layoff of staff at Kranz is disproportionate relative to the layoff of certificated personnel at other school sites.

Exemption or Skipping Related to the Endeavor Program

18. Haile Ucbagaber is a certificated employee who would have been laid off by virtue of his lack of seniority but for the District's decision to skip him by virtue of the exemption provided for certificated personnel who have been awarded Endeavor Fellowships with NASA presently working to earn a Certificate in STEM Education. Mr. Ucbagaber is the only employee to whom that exemption was applied. He is no longer a respondent in this matter, as he did not submit a Notice of Defense in response to the Accusation.

19. Mr. Ucbagaber is one of only 60 teachers in the nation to be accepted into the NASA Endeavor program, which provides training for those working toward earning the STEM certificate from Columbia University. It is expected that Endeavor fellows will obtain a better understanding of NASA discoveries, which they can share with their students. Mr. Ucbagaber was accepted into the program a few months ago. It was not established when he will complete his studies and be awarded with the STEM Certificate. Mr. Ucbagaber has a clear multiple subject credential with a CLAD and is No Child Left Behind (NCLB) compliant. He is presently assigned to teach algebra and science classes in the eighth grade. Ms. Diaz testified that Mr. Ucbagaber uses what he learns in the Endeavor program in teaching his math and science classes.

Exemption or Skipping Related to the Newcomer Program

20. The District seeks to exempt or "skip" Respondent Irma Parisi, its only Newcomer teacher, from layoff based upon her special training and experience to perform this position. The Newcomer program essentially is an English immersion program specifically designed for students who have been in the United States for one year or less and speak little or no English. Approximately 70 percent of the District's student population is Spanish speaking. Students enrolled in the Newcomer program have unique and special needs associated with their inability to speak English, their recent introduction into the American community and culture, the sometime traumatic circumstances surrounding their immigration to the United States, including separation from parents and family, and the inability of their parents to communicate in English. The Newcomer teacher must work with other teachers and parents in assessing the student's needs and determining the appropriate classroom placement of the Newcomer student. In light of these circumstances, the District established a specific need for personnel to teach the Newcomer program.

21. According to an official job description, qualifications for the Newcomer teacher include: the ability to work cooperatively and effectively with others, particularly at grade level assignment; ability to work with a spirit of enthusiasm and cooperation on a school team; knowledge of discipline techniques; knowledge of effective practices in English Language Development (ELD); multiple subject credential with a Bilingual Certificate of Competence (BCC), the predecessor to the BCLAD, or BCLAD; successful experience working with non-English speaking students; training in Project GLAD (Guided Language Acquisition Design) or willingness to participate in such training; and being bilingual and biliterate.

22. Respondent Parisi has a seniority date of August 29, 2001. She has been the Newcomer teacher with the District for over ten years, will be assigned to teach the Newcomer position next school year, and possesses the special training and experience described in the part of the Resolution pertaining to the Newcomer exemption. Since she has been assigned to the Newcomer program for so many years, Respondent Parisi has been involved in developing the curriculum for the program, including close collaboration with LACOE, as well as training others and being a mentor. Ms. Diaz testified that such experience is a critical part of the Newcomer position, since the person is responsible for providing training and developing the curriculum.

23. Respondent Jacqueline Hernandez is senior to Respondent Parisi, having a seniority date of September 1, 1999. She has a clear multiple subject credential with a BCLAD. In fact, other than Respondent Sandy Cannon, she is the most senior employee with such a credential to be given a preliminary layoff notice. Respondent Hernandez is certificated to perform the Newcomer position, including having the BCLAD. She is bilingual and biliterate. She has training in GLAD, systematic ELD, and Thinking MAPS, among other programs. Over the past 11 years at the District, she has extensive experience working with ELD students, and has significant experience teaching Newcomer students. In sum, she meets all of the requirements for the Newcomer position as stated in the District's job description. However, Respondent Hernandez has never before been assigned to teach in the Newcomer program, and is not currently expected to have such an assignment next school year. It was not established that she has the experience developing curriculum unique to the Newcomer program or in training others on such material.

Individual Respondents

24. Neelan Tandon. Because Respondent Tandon has two single subject credentials, not one, she should have received seven additional tiebreaking points for that category. She should not be given credit for one supplemental authorization, so she is not entitled to three points for that category. Overall, her tiebreaking points should be increased to 28, which places her second on the seniority list of those with a date seniority date of August 28, 2002.

25. Rachel Chan. This Respondent was involved in a lottery relative to the tiebreaking process. District staff notified by telephone employees involved in a lottery. However, due to a voice-mail problem at her school site, Respondent Chan did not receive the message regarding the time and place of the lottery so she did not attend. However, a union representative was present when Respondent Chan's lottery took place, and there is no evidence indicating any irregularity with the lottery process. Moreover, every person with her same seniority date involved in the lottery is still subject to layoff, so whether she attended the lottery or not would not change her outcome in this case.³

³ Nonsubstantive procedural errors committed by a school district shall not constitute cause for dismissing the charges unless the errors are prejudicial. (Ed. Code, § 44949, sub. (c)(3).) Respondent Chan demonstrated no prejudice.

26. Daniel Montejano. This Respondent teaches Physical Education (PE). He was bumped by another employee with greater seniority who possesses a PE supplemental authorization, a credential that will allow him to also teach PE. While Respondent Montejano presented impressive evidence of his special training and experience in PE, he failed to establish that the other employee is not credentialed and competent to bump into his assignment. The issue of bumping is not which of the two employees in question has greater experience or training; it is of whether the more senior of the two is credentialed and competent to teach the position.

LEGAL CONCLUSIONS

Jurisdiction and Notice

1. The party asserting a claim or making charges in an administrative hearing generally has the burden of proof. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.) For example, in administrative hearings dealing with personnel matters, the burden of proof is ordinarily on the agency prosecuting the charges (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113); in personnel matters concerning the dismissal of a teacher for cause, the burden of proof is similarly on the discharging school district (*Gardner v. Commission on Prof. Competence* (1985) 164 Cal.App.3d 1035). As no other law or statute requires otherwise, the standard of proof in this case requires proof to a preponderance of the evidence. (Evid. Code, § 115.)

2. Respondents take exception with the fact that more employees received preliminary layoff notices than which corresponds to the FTEs subject to reduction or elimination. Respondents request that the layoff notices received by those in question be rescinded. However, in *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, the court recognized the statutory necessity of giving more notices than the number of teachers who may actually be laid off. The *Allen* court observed that the present statutory timetable is unrealistic, and that although a teacher who is terminated has preferential rights to reemployment should the district decide fewer reductions are necessary, “this provides little solace to the understandably upset teacher who is given a needless preliminary (and perhaps final) notice because the school district cannot accurately ascertain its financial circumstances for the ensuing school year until the chaptering of the state budget.” (*Id.*, at pp. 632-633.) In this case, the District does not presently intend to give final layoff notices to some of the Respondents, many of whom were identified during the hearing, unless some of its critical seniority decisions are overruled in this matter. No Respondent established any prejudice to the preparation of their defense in this matter caused by the District proceeding in this way. The District was therefore entitled to proceed in this manner. (Factual Findings 1-5.)

3. All notice and jurisdictional requirements of Education Code sections 44949 and 44955 were met.⁴ (Factual Findings 1-5.)

⁴ All further statutory references are to the Education Code.

Particular Kinds of Services

4. The services identified in the Resolution are particular kinds of services that can be reduced or discontinued pursuant to section 44955.

5. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Services will not be reduced below mandated levels. Cause for the reduction or discontinuation of those particular services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. (Factual Findings 1-13.)

6. (A) Respondents contend that the District was required to initiate an average daily attendance (ADA) layoff as provided in section 44955, subdivision (b), instead of a layoff of particular kinds of services, because Ms. Diaz testified that declining enrollment was partially responsible for the District's financial uncertainty.

(B) 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 section 44955, 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." Such a decision may be overruled if proven to be arbitrary or capricious, but a motivation to maintain flexibility in light of financial uncertainty is neither. (*Campbell Elementary Teachers Association, Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 808.)

(C) Here, the District established that the reduction of particular kinds of services pursuant to section 44955 was a result of substantial fiscal uncertainty created by a number of financial problems, only one of which is related to declining student enrollment. Thus, the reason for the layoff, i.e., the reduction or elimination of particular kinds of services, was correctly stated in the pertinent notices. The Legislature's use of the term "may" in section 44955, subdivision (b), following the enumeration of the different types of reductions (PKS or ADA), indicates that the Board has discretion to proceed under either process. Respondents did not establish that the Board's layoff decision was purely based on a reduction in ADA. Moreover, there is nothing in section 44955 prohibiting an expected decline in student enrollment from being one factor in the overall decision to reduce or eliminate particular kinds of services based on financial circumstances. Further, ADA refers to a decline in past enrollment, as opposed to a projected decline in future enrollment.

7. (A) By effectuating the Resolution as it has, the District exceeded the Board's authority to layoff 47 FTE multiple subject classroom positions by proposing to layoff 47.1 such FTE positions. Section 44955, subdivision (b), states that when a governing board has determined to reduce or eliminate particular kinds of services, it "may terminate the services of not more than a corresponding percentage of the certificated employees of the district. . . ." This evidences a statutory intent to limit the number of employees actually subject to layoff

to correspond with the number of FTE positions a governing board determines is necessary to be reduced or eliminated.

(B) In this case, the District cited no authority indicating such a situation is permissible. The legal authority cited by the District involved partial bumping situations where employees were prevented from asserting bumping rights that would have resulted in the creation of untenable partial assignments. Those cases, however, did not involve situations where the involved districts tried to exceed the number of FTE positions authorized by their governing boards to be reduced or eliminated in effectuating the layoffs. The District's argument here that retaining Respondent Dincin would result in an impractical .1 FTE assignment is of no moment. Since Respondent Dincin holds a one FTE position and the District only has authority to reduce or eliminate 90 percent of her position, she must be allowed to retain the corresponding percentage of her assignment, i.e., .1 FTE. The District has other means available to make this situation less than impracticable. In any event, it is the District that is responsible for this situation, not Respondent Dincin.

Skipping Issues: Endeavor Program

8. Section 44955, subdivision (d)(1), provides: "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 of study or to provide those services, which others with more seniority do not possess. . . ." Section 44955, subdivision (b) provides, in part: "Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while . . . any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render."

9. The District's decision to skip Mr. Ucbagaber is invalid. He is currently teaching regular eighth grade science and math classes. No evidence was presented indicating next year's assignment will be any different. Thus, the District failed to establish that it has a need for Mr. Ucbagaber to "teach a specific course or course of study . . . which others with more seniority do not possess." Any certificated employee with a credential allowing them to teach middle school math and science has the same training and experience necessary for that assignment. The fact that Mr. Ucbagaber has not yet obtained his STEM Certificate amplifies the flaw with this skipping decision. It is significant to note that all of the exempted categories include possession of a particular credential or authorization, with the lone exception of the Endeavor program, because Mr. Ucbagaber has not yet obtained his STEM Certificate.

10. There are a number of Respondents with a clear multiple subject credential who are senior to Mr. Ucbagaber. The most senior such Respondent subject to layoff appears to be Sandy Cannon. If the District decides to retain Mr. Ucbagaber, the District should retain the one most senior Respondent in the same subject area as Mr. Ucbagaber as a remedy for this situation.⁵

Skipping Issues: The Newcomer Program

11. In *Bledsoe v. Biggs Unified School Dist.* (2009) 170 Cal.App.4th 127, 134-135, a school district was able to skip two junior employees because of the district's demonstrated need for teachers with experience instructing in a community day school. The junior teachers in that case possessed special training and experience that enabled them to meet that district's specialized needs for alternative education. That need was demonstrated by showing the teachers had taken courses in subjects that covered areas of instruction, had training in areas related to working with students with behavioral issues, and had actual experience in dealing with the day school students.

12. Here, the District has skipped Respondent Parisi and will retain her as the Newcomer teacher. The District demonstrated a specific need for personnel to teach the Newcomer course and Respondent Parisi possesses the special training and experience necessary to teach that course. Respondent Hernandez meets all of the requirements of the District's official job description for the Newcomer position, including extensive experience working with Newcomer students. Yet, despite her years of service within the District, Respondent Hernandez has not previously been assigned to a position within the Newcomer program. The fact that she has significant experience working with Newcomer students does not bring her into compliance with this part of the Resolution defining the Newcomer exemption. The District established that having such actual experience is necessary, in that developing the necessary curriculum and being able to train and mentor others is a critical part of the assignment. Under these circumstances, Respondent Hernandez failed to establish that she possesses the special training and experience necessary for the Newcomer program. The skip is valid.

⁵ Rescinding the layoff notices of all senior respondents in the same subject area, i.e., the so-called "domino theory," is not supported by relevant legal authority. In fact, it has been noted that the proper remedy for such a situation is for a "corresponding number of the most senior employees" who did receive a layoff notice to have their notices withdrawn. (*Alexander v. Delano Joint Union High School District* (1983) 139 Cal.App.3d 567, 576.) One noted legal scholar on school district layoff cases in California disapproves of applying the domino theory in cases of good-faith errors by districts. (Ozsogomonyan, *Teacher Layoffs in California: An Update*, (1979) 30 Hastings Law Journal 1727, 1754-1759.) Finally, the approach approved by the *Alexander* court has been generally accepted by ALJs of the Office of Administrative Hearings in cases of good faith errors by school districts.

Overall

13. Except as otherwise specified in the Factual Findings and Legal Conclusions above, no junior certificated employee will be retained to perform services that a more senior employee is certificated and competent to render. (Factual Findings 1-26.)

ORDER

1. If the District retains Haile Ucbagaber, the Accusation issued against the most senior Respondent in the same subject area as Mr. Ucbagaber shall be dismissed and that individual shall not be given a final layoff notice.

2. The District may otherwise give notice to the remaining Respondents identified in Appendix A that their services will not be required for the 2011-2012 school year, except that Respondent Dincin shall be retained in a .1 FTE position.

DATED: May 3, 2011

Eric Sawyer
Administrative Law Judge
Office of Administrative Hearings

APPENDIX A: List of Respondents

Balbuena, Antonio
Barajas, Ruby
Bowers, Marcos
Bowers, Patricia
Bowman, Kenneth
Cannon, Sandy
Chan, Rachel
Chau Phan, Linh
Coss, Carrie
DeCamp, Diana
Dincin, Bernadette
Durall, Sharon
Enciso, Andrea
Estes, Hannah
Gallegos, Olga
Gonzalez, Maricela
Grebel, Christina
Greene, Chad
Hernandez, Jacqueline
Hernandez-Lopez, Aracely
Hyde, Belinda
Ivey, Michele
Johnny, Karyn
Kurtz, Kathy
Leonin, Cecilia
Li, Felicita
Limon, Tashanda
Loya, Lizette
Montejano, Daniel
Orellana, Juan
Parisi, Irma
Puente, Jerardo
Romero, Nellyann
Santiago, Jose
Siebel, Jennifer
Swenson, Julie
Tandon, Neelam
Torres, Marisa
Villavicencio, Maria

