

BEFORE THE
GOVERNING BOARD OF THE
WESTERN PLACER UNIFIED SCHOOL DISTRICT
COUNTY OF PLACER
STATE OF CALIFORNIA

In The Matter of the Accusations/
(Reduction In Force) against:

TERESA CONROY, CYNTHIA CYGAN,
JENNA DANIELS, HEATHER
DONOVAN, AMANDA FLESHMAN,
MARGARET HAMRICK, BRENDA
JAMES, THOMAS KELLEY, MILAGROS
MEDINA, KIMBERLY MOSS, MELANIE
RILEY-GONZALEZ, DAYNA
SWANSON, CASSANDRA WALKER,
JULIE WALKER, and AMY WILLIAMS,

OAH No. 2008030489

Respondents.

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on April 18, 2008, in Lincoln, California.

Heather M. Edwards, Attorney at Law, represented the Western Placer Unified School District.

Lesley Beth Curtis, Attorney at Law, represented respondents.

Evidence was received and the matter was submitted on April 18, 2008.

FACTUAL FINDINGS AND DISCUSSION

1. Scott Leaman is the Superintendent of the Western Placer Unified School District (District). His actions and the actions of the District Governing Board were taken in their official capacities.

2. Respondents are permanent or probationary certificated employees of the District. On March 12, 2008, the District 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 be reduced or would not be required for the 2008-2009 school year. Each written notice set forth the reasons for the recommendation and noted that the District Governing Board had passed a Resolution reducing the certificated staff by 20.7 full-time equivalent (FTE) positions. Respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

3. The Superintendent made and filed Accusations against respondents. The Accusations with required accompanying documents and blank Notices of Defense were timely served on respondents. Each respondent, except Cassandra Walker, timely filed a Notice of Defense to the Accusation.

4. On March 11, 2008, at a regular meeting, the District Governing Board was given notice of the Superintendent's recommendations that certificated employees holding 20.7 FTE positions be given notice that their services would be reduced or not required for the next school year and stating the reasons for that recommendation.

5. On March 11, 2008, the District Governing Board determined that it was necessary to decrease programs and services and thus it was necessary to reduce teaching services affecting employment of 20.7 FTE positions. The District Governing Board adopted Resolution No. 07-08.14 providing for the reduction or elimination of the following particular kinds of services (PKS):

Counselor, High School	1.0 FTE
K-5 Self-Contained Classrooms	12.0 FTE
K-5 Science	1.7 FTE
9-12 Offerings	
Ag Farm	1.0 FTE
Physical Education	1.5 FTE
Home Economics	1.0 FTE
Continuation	1.0 FTE
Independent Study	1.0 FTE
Art	<u>0.5 FTE</u>
Total	20.7 FTE

6. At the time of hearing layoff notices were rescinded as to five individuals previously served with Accusations.¹ In addition, notices to respondents Jenna Daniels and Melanie Riley-Gonzalez, which had previously been for 1.0 FTE each, were adjusted to .7 FTE and .5 FTE, respectively.

¹ These individuals were Lacey Anderson, Laura Mosbacher, Lisa Riddagh, Molly Sjordal and Susan Wagner.

7. The District served an Accusation and Notice of Defense form on Cassandra Walker. These and other documents were sent by the District via certified mail on April 4, 2008. Ms. Walker never received these documents. She checked to see if any of her mail had been held for her at the post office and it had not been so held. The Accusation and Notice of Defense form were mailed to her correct address. She did receive a layoff notice from the District that was sent to the same address via certified mail, and she had filed a request for hearing. Ms. Walker was made aware of these proceedings and participated. Notwithstanding her failure to file a notice of defense, she may participate as a party to these proceedings.

8. The Governing Board's resolution to reduce or discontinue particular kinds of services was made in order to reduce costs without reducing core subject areas. The District has projected 2008-09 revenue reductions to approximate \$1.2 million. The District also projects cost increases in excess of \$1 million. The combination of decreased revenues received from the state and cost increases has created a total budget shortfall of \$2,335,801. The District's budget reduction target is higher (\$2,634,302) to account for deficits in available fund balances. All this comes at a time when enrollment may increase, with projected average daily attendance up by as many as additional 595 students. Although each additional student adds revenue to the District, the amount the District receives per student has declined. And combined with rising costs, the increased student enrollment will not improve the District's fiscal situation.

9. The District maintains a Certificated Seniority List which contains employees' seniority dates (first date of paid service), status as tenured, probationary or temporary, and credentials and authorizations. Status, credential and authorization data are obtained from the District's records and employees are given the opportunity to correct errors in the seniority list.

Robert Noyes is the District's Assistant Superintendent, Personnel Services. He and other District employees were responsible for implementation of the technical aspects of the layoff. 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 these employees held credentials in another area and were entitled to "bump" other employees.

August 17, 2007 New Teacher Orientation

10. Nine respondents have seniority dates of August 20, 2007, and contend that it should be corrected to be August 17, 2007, to account for their attendance at a new teacher workshop held that day, from 8:00 a.m. to 3:00 p.m.² New teachers were requested to, and understood that they should attend this workshop, although they were not told in so many words that their attendance was mandatory. They were neither penalized nor disciplined in

² The nine individuals include: Cynthia Cygan, Amanda Fleshman, Margaret Hamrick, Brenda James, Milagros Medina, Melanie Riley-Gonzalez, Dayna Swanson, Julie Walker and Amy Williams.

any way for failing to attend. The workshop consisted of an orientation to the District and introduction to key personnel. New teachers were instructed on District protocols on a range of matters such as what to do when a substitute teacher was needed, or whom to go to for help in different circumstances. Time was also set aside to meet with the Western Placer Teachers Association (WPTA).

Article XV of the collective bargaining agreement between the District and WPTA makes specific reference to 183 duty days that District teachers are required to be in attendance over the course of a work year, and 184 duty days for teachers new to the District. The additional duty day for new teachers was meant to be the date set aside for the new teacher workshop/orientation, in this case the one held on August 17, 2007. New teachers were not paid an additional amount for attending the workshop, presumably because it was part of the 184 duty days encompassed within their annual salary.

11. Under the terms of the collective bargaining agreement, duty days are those which teachers are required to be in attendance. The August 17, 2007 new teacher workshop constituted a duty day. Thus, it should have been considered by the District to be the date attending teachers first rendered paid service to the District.

The difficulty presented in this case is that a complete list of attendees at the August 17, 2007 new teacher workshop was not available at the time of hearing. It is likely that the large majority of teachers listed by the District as having an August 20, 2007 seniority date also attended the workshop. The District suggests that it may then be a moot issue. The District also notes that all teachers were afforded an opportunity to review and correct their seniority dates, and did not do so. There was no evidence that earlier adjustments were made to account for attendance at the workshop.

12. The seniority date for the nine respondents who attended the new teacher workshop should be changed August 20, 2007, to August 17, 2007. The District should also change the seniority date of other new teachers who attended the workshop from August 20, 2007, to August 17, 2007. After these adjustments are made, the District should rescind notices to the degree and extent that the August 17, 2007 seniority date places respondents above less senior teachers who were not given layoff notices.

Teachers Holding District Intern or University Intern Credentials and Who Occupy Positions for Which Respondents are Competent and Credentialled

13. The District's Governing Board met on or around April 15, 2008, and determined at that time to release four interns, three holding a district intern credential, and one holding a university intern credential.³ They were assigned to teach high school English

³ The teachers are: David Lynn Foxworthy, university intern with a single subject credential for biological sciences; Jared John Gonsalves, district intern with a single subject credential for mathematics; Holli Ann Little, district intern with a single subject credential for English; and Lori Janine Schleppenbach, district intern with a single subject credential for mathematics.

(1.0 FTE), high school biological science (1.0 FTE), and eighth grade mathematics (2.0 FTE). None of these four classes were identified or included as part of the particular kinds of services to be reduced or discontinued for the 2008-2009 school year. The four interns were not issued layoff notices under Education Code sections 44949 and 44955. Thus, the District may consider these vacated positions in much the same way as it would consider other positively assured attrition.

Respondents suggest it is first necessary to find that the four interns were probationary employees in order for other teachers to move into their positions. It is not clear why such a finding is needed. If the vacated positions are not slated for PKS reductions, the District may reassign teachers into the positions. Still, in an abundance of caution, there was no evidence presented to indicate whether these teachers were serving under temporary employment contracts and therefore subject to annual release. For example, there was no evidence that any of the four were: 1) replacing a teacher on leave (Ed. Code, § 44920); 2) teaching in a temporary class (Ed. Code, § 44919, subd. (a)); 3) teaching in special day and evening adult classes (Ed. Code, § 44919, subd. (a)); 4) teaching in schools for migratory population (Ed. Code, § 44919, subd. (b)); 5) serving in a limited assignment supervising athletic activities (Ed. Code, § 44919, subd. (b)); or 6) serving in any other temporary situations identified in the Education Code.

Appellate courts have interpreted the temporary classifications narrowly, allowing districts to classify teachers as temporary only on the grounds provided in the Education Code. Thus, if a teacher does not satisfy the statutory grounds for a temporary classification, the default or catchall provision of Education Code section 44915 mandates that the district classify a teacher as a probationary employee. (*Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1279-1281; *California Teachers Association v. Vallejo City Unified School District* (2007) 149 Cal.App.4th 135, 146; *Vasquez v. Happy Valley Union School District* (2008) 159 Cal.App.4th 969, 981-986.)

With this in mind, the District is required to make assignments and reassessments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. (Ed. Code, § 44955, subd. (c).) And this includes potential assignment and reassignment into the positions made available by the departure of the four interns.

14. Respondent Jenna Daniels has a District Seniority date of August 29, 2007. She was noticed for layoff due to the reduction of K-5 Science by .7 FTE. Ms. Daniels holds a single subject credential for biological sciences. She is qualified to teach the high school biological sciences class previously taught by David Lynn Foxworthy. No one with greater seniority than Jenna Daniels possesses the credentials and qualifications to move into the position. This may lead to a part-time bumping situation, if Ms. Daniels retains .3 FTE K-5 and takes only .7 FTE high school biological sciences. It is a matter better left for the District to work out with Ms. Daniels.

15. Three other teachers were identified as having credentials that would allow them to be reassigned next year to the two eighth grade mathematics classes, and one high school English class. Sandra K. Beckman holds a multiple subject credential with a supplementary authorization to teach mathematics (K-9). She is currently in an elementary school position. Rene McGrath also holds a multiple subject credential with a supplementary authorization to teach mathematics (K-9). She is currently in an elementary school position at Carlin C. Coppin Elementary School. Were Ms. Beckman and Ms. McGrath to be reassigned to teach eighth grade mathematics, two of respondent elementary school teachers could be assigned to teach their classes. Melanee Ford holds a multiple subject credential with a supplementary authorization to teach English. If she were reassigned to teach high school English, one of respondent elementary school teachers could be assigned to teach her class.

The District's release of the four interns results in four positions into which teachers may be reassigned. Respondent Jenna Daniels may be reassigned into high school biological sciences for the 2008-2009 school year.

The District has discretion as to whether additional assignments and reassignments should be made to save other junior teachers named as respondents. While the District has an affirmative obligation to reassign senior teachers who are losing their positions, it does not have the same obligation to reassign senior teachers who are not losing their positions in an effort to save junior teachers. In short, the District cannot be compelled to engage in inverse bumping and to reassign Sandra Beckman, Rene McGrath and Melanee Ford into the positions held by the three interns in order to save respondent elementary school teachers from losing their positions.

Other Matters Relating to Individual Teachers

16. Brenda James and Dayna Swanson teach kindergarten classes at Twelve Bridges and Lincoln Crossing Elementary Schools, respectively. They both attended a Kindergarten Workshop on August 15, 2007, from 8:00 a.m. to noon at Twelve Bridges Elementary School. All district kindergarten teachers were invited to attend. The purpose was to "collaboratively create a kindergarten assessment packet and rubric to use to assess students district-wide." Ms. Swanson was told that she "needed to attend." It appears that another teacher stated this to her. This particular program was subject to the District's professional development "buy-back hours" program. Both employees received four hours credit for their participation and were compensated for their time. Attendance was not mandatory. Given the nature of this particular workshop, Ms. James and Ms. Swanson are not entitled to change their seniority date based upon their attendance at same.

17. Milagros Medina is an elementary school teacher. She attended a six-hour GLAD Summer Planning program on August 8, 2007. This was a program designed to develop strategies for working with students in the District's English Language Learner program. Participation in this program was not mandatory. Ms. Medina received

professional development credit (buy-back hours) for her attendance. She is not entitled to change her seniority date based upon her attendance at this program.

18. Melanie Riley is a band teacher at Lincoln High School. She holds a single subject music credential. When home economics was reduced, Cindy Hagman was reassigned from home economics into Ms. Riley's position. Ms. Hagman holds a single subject music credential with a CLAD. Ms. Hagman is also more senior to Ms. Riley and is therefore entitled to bump into her position.

Ms. Riley contests application of any tie-breaking criteria based upon her not having a CLAD. Ms. Riley finished her CLAD coursework in January 2008, and has submitted necessary documentation to the California Commission on Teacher Credentialing (CTC). She received confirmation from CTC that her application is pending evaluation.

Peggy VanLengen is the District's Personnel Account Technician. In mid-January 2008, she contacted Ms. Riley and inquired as to the status of her CLAD. Ms. Riley advised her that she would be done with the course by the end of the month. When Ms. Riley completed the course, she did not so advise the District. Ms. Riley believes that the District should credit her for having a CLAD pending. The District has done so for others. For example, Melissa Garcia is an elementary school teacher with a single subject music credential. She was credited with having a "CLAD pending" and is still taking the course toward CLAD certification, the test for which will be given in June 2008. Ms. Riley is obviously ahead of her and should also be credited with having a CLAD pending by the District. Although employees should bear the responsibility of updating their credentials/certifications on file with the District, this is an instance where Ms. Riley was asked by the District in mid-January about the status of her CLAD, and the District was on notice that she would have been finished with her CLAD coursework by the end of January 2008.

19. Amanda Fleshman is a second grade elementary teacher at Twelve Bridges Elementary School. She is currently enrolled and taking course work toward CLAD certification. The class will continue through May 2008, and the test will be given in June 2008. She is in the same class as Melissa Garcia and believes she also should be given status as CLAD pending. There is no evidence that she advised the District of these facts prior to March 15, and she should not be accorded CLAD pending status for this reason.

20. Thomas Kelley holds a pupil personnel services credential with a specialization in school counseling. He works a half day at Phoenix Continuation School, and a half day at Lincoln High School. He received a layoff notice because of the planned elimination of a high school counselor position. The Placer County Office of Education will be transferring a counselor position to the District next school year to work in the special education area. In addition to holding a pupil personnel services credential, the counselor position will require additional certification in either behavior analysis or applied behavior analysis. Mr. Kelley holds neither of these additional certifications. He also notes that the CTC does not list either of these certifications on its website and he questions whether they

can legitimately be required for this position. He is willing to pursue specializations if he is hired into the position.

The District has a need for a counselor to work with autistic children and who can conduct behavioral assessments for this population. Eli Gallup is the District's Director of Special Education. He explained the reasoning for having the special education counselor hold additional certifications in either behavior analysis or applied behavior analysis. In making reassessments, a district is permitted to consider the qualifications of an employee prior to making such reassignment. The District has articulated its rationale for not offering Mr. Kelley the special education counselor position. Mr. Kelley has not demonstrated that he is otherwise qualified to serve in that position.

21. The District applied tie-breaking criteria as between Kimberly Moss and Teresa Conroy in reducing physical education by 1.5 FTE. Both have the same seniority date. Ms. Moss holds a multiple subject credential with CLAD and a physical education authorization. Ms. Conroy holds a single subject credential in physical education. As a result of application of tie-breaking criteria, Ms. Conroy is deemed "more senior" to Ms. Moss. The single subject credential "trumps" the authorization for physical education. Thus, Ms. Moss was noticed for 1.0 FTE, and Ms. Conroy for the remaining .5 FTE.

22. With due consideration and adjustments made for the matters noted above, no permanent or probationary certificated employees junior to respondents are being retained to perform a service which respondents are certificated and competent to render. Those certificated employees junior to respondents being retained will provide services which respondents are not certificated and competent to perform.

LEGAL CONCLUSIONS

1. The District employees receiving notices that their services would not be required next year have all rendered services to the District.

2. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. 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* (1983) 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.)

3. The services identified in Board Resolution No. 07-08.14 are particular kinds of services (PKS) that could be reduced or discontinued under Education Code section 44955. The Governing 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 Education Code section 44949.

4. A District may reduce services within the meaning of Education Code 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. Education Code section 44955 provides in pertinent part:

¶...¶

(b) Whenever in any school year ... whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, ...or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

¶...¶

6. Education Code section 44955 provides that when certificated employees face layoffs due to reduction or elimination of PKS, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers, if the senior teacher has both the credentials and competence to occupy such positions. The intent of the Legislation is clearly to prevent Districts from laying off senior teachers while retaining junior teachers. Education Code section 44955, subdivision (c) provides in pertinent part:

Services of such employees shall be terminated in the inverse of the order in which they were employed... The governing board shall make assignments and reassignments in such a manner that

employees shall be retained to render any service which their seniority and qualifications entitle them to render...

7. As set forth in Factual Findings 10 through 12, the seniority date for the nine respondents who attended the new teacher workshop should be changed from August 20, 2007, to August 17, 2007. The District should also change the seniority date of other new teachers who attended the workshop from August 20, 2007, to August 17, 2007. After these adjustments are made, the District should rescind notices to the degree and extent that the August 17, 2007 seniority date places respondents above less senior teachers who were not given layoff notices and who occupy positions for which respondents are credentialed and competent.

8. As set forth in Factual Findings 13 through 15, the District's release of the four interns results in four positions into which respondents Jenna Daniels and three others may be reassigned for the 2008-2009 school year. The District is required to make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. (Ed. Code, § 44955, subd. (c).) This includes potential assignment and reassignment into the positions made available by the departure of the four interns.⁴ Respondent Jenna Daniels should be reassigned into high school biological sciences for the 2008-2009 school year. The District has discretion as to the other three positions.

9. As set forth in Factual Findings 16 and 17, the seniority dates of Brenda James, Dayna Swanson and Milagros Medina should not be changed on account of their attendance at the Kindergarten Workshop or the GLAD Summer Planning Program. Participation in these programs was not mandatory and the employees received professional development credit (buy-back hours) for their attendance. They are not entitled to change their seniority date based upon attendance at these programs.

10. As set forth in Factual Findings 18 and 19, Melanie Riley should be credited with CLAD pending status in any application of tie-breaking criteria. However, Amanda Fleshman shall not be so credited.

11. As set forth in Factual Finding 20, the District has met its initial obligation, under Education Code section 44955, subdivision (c), to make a determination whether Thomas Kelley's seniority and qualifications entitle him to be reassigned to the new special education counselor position. The District reasonably decided not to re-assign Mr. Kelley,

⁴ The four interns were not found to be temporary employees. (See Finding 13.) As noted earlier, appellate courts have interpreted the temporary classifications narrowly, allowing districts to classify teachers as temporary only on the grounds provided in the Education Code. Thus, if a teacher does not satisfy the statutory grounds for a temporary classification, the default or catchall provision of Education Code section 44915 mandates that the district classify a teacher as a probationary employee. (*Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1279-1281; *California Teachers Association v. Vallejo City Unified School District* (2007) 149 Cal.App.4th 135, 146; *Vasquez v. Happy Valley Union School District* (2008) 159 Cal.App.4th 969, 981-986.)

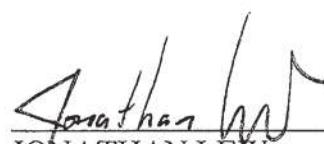
based upon the District's need for a counselor with qualifications related to behavior analysis or applied behavior analysis. Mr. Kelley has not persuasively rebutted the District's decision not to assign him to this position. The District has established that no employee junior to Mr. Kelley is being retained to perform services which Mr. Kelley is competent and certificated to render.

12. Cause exists for the reduction of the particular kinds of services and for the reduction of 20.7 full-time equivalent certificated positions at the end of the 2007-2008 school year pursuant to Education Code sections 44949 and 44955. Therefore, and except as noted above in Legal Conclusions 7 through 10, cause exists to give respondents notice that their services will be reduced or will not be required for the ensuing 2008-2009 school year.

ORDER

Cause exists for the reduction of 20.7 full-time equivalent certificated positions at the end of the 2007-2008 school year. After making the adjustments set forth in Legal Conclusions 7 through 10, notice shall be given to remaining respondents that their services will be reduced or will not be required for the ensuing school year, 2008-2009, because of the reduction and discontinuance of particular kinds of services.

DATED: April 22, 2008



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings

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PROPOSED DECISION FOLLOWING REQUEST FOR CLARIFICATION

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Evidence was received and the matter was submitted on April 18, 2008. A Proposed Decision issued on April 22, 2008. On May 12, 2008, the parties made a joint Request for Clarification Regarding Impact of Proposed Decision Findings of Fact Numbers 11 and 12. Memoranda of Points and Authorities were submitted by both parties, and oral argument heard this same date. This decision clarifies earlier Factual Findings 11 and 12.

FACTUAL FINDINGS AND DISCUSSION

1. Scott Leaman is the Superintendent of the Western Placer Unified School District (District). His actions and the actions of the District Governing Board were taken in their official capacities.

2. Respondents are permanent or probationary certificated employees of the District. On March 12, 2008, the District 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 be reduced or would not be required for the 2008-2009 school year. Each written notice set forth the reasons for the recommendation and noted that the District Governing Board had passed a Resolution reducing the certificated staff by 20.7 full-time equivalent (FTE) positions. Respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

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August 17, 2007 New Teacher Orientation

10. Nine respondents have seniority dates of August 20, 2007, and contend that it should be corrected to be August 17, 2007, to account for their attendance at a new teacher workshop held that day, from 8:00 a.m. to 3:00 p.m.² New teachers were requested to, and understood that they should attend this workshop, although they were not told in so many words that their attendance was mandatory. They were neither penalized nor disciplined in any way for failing to attend. The workshop consisted of an orientation to the District and introduction to key personnel. New teachers were instructed on District protocols on a range of matters such as what to do when a substitute teacher was needed, or whom to go to for help in different circumstances. Time was also set aside to meet with the Western Placer Teachers Association (WPTA).

Article XV of the collective bargaining agreement between the District and WPTA makes specific reference to 183 duty days that District teachers are required to be in attendance over the course of a work year, and 184 duty days for teachers new to the District. The additional duty day for new teachers was meant to be the date set aside for the new teacher workshop/orientation, in this case the one held on August 17, 2007. New teachers were not paid an additional amount for attending the workshop, presumably because it was part of the 184 duty days encompassed within their annual salary.

11. Under the terms of the collective bargaining agreement, duty days are those which teachers are required to be in attendance. The August 17, 2007 new teacher workshop constituted a duty day. Thus, it should have been considered by the District to be the date attending teachers first rendered paid service to the District.

The difficulty presented in this case is that a complete list of attendees at the August 17, 2007 new teacher workshop was not available at the time of hearing. It is likely that the large majority of teachers listed by the District as having an August 20, 2007 seniority date also attended the workshop. The District suggests that it may then be a moot issue. The District also notes that all teachers were afforded an opportunity to review and correct their seniority dates, and did not do so. There was no evidence that earlier adjustments were made to account for attendance at the workshop.

A sign-in sheet and list of attendees at the August 17 new teacher workshop was found and submitted on May 12, 2008.

12. The seniority date for the nine respondents who attended the new teacher workshop should be changed August 20, 2007, to August 17, 2007. The District should also change the seniority date of other new teachers who attended the workshop from August 20,

² The nine individuals include: Cynthia Cygan, Amanda Fleshman, Margaret Hamrick, Brenda James, Milagros Medina, Melanie Riley-Gonzalez, Dayna Swanson, Julie Walker and Amy Williams.

2007, to August 17, 2007.³ After these adjustments are made, the District should rescind notices to the degree and extent that the August 17, 2007 seniority date places respondents above less senior teachers who were not given layoff notices.

The parties agree that one teacher, Pamela L. Johnson, who did not attend the August 17, 2007 workshop and who therefore retains her August 20 2007 seniority date, is currently assigned to teach using her multiple subject credential. Ms. Johnson is assigned to a middle school classroom, but is teaching two cores with a hanging fifth period pursuant to Education Code section 44258.1. This arrangement allows her to teach using her multiple subject credential. Therefore, the District has retained one teacher who is less senior to teach a class that eight respondents are competent and credentialed to teach.⁴ There may also be a second teacher besides Ms. Johnson who is less senior to teach a class that these same respondents are competent and credentialed to teach.

Respondents contend that the plain language of Education Code section 44955 requires the District to retain all eight respondents who are more senior to Ms. Johnson since the layoff would be illegal as to each of them. However, the District should only be required to rescind one layoff notice, two if a second teacher is identified, by applying the "corresponding number" standard articulated in *Alexander v. Delano Joint Union High School District* (1983) 139 Cal.App.3d 567. In *Alexander*, the First District Court of Appeal found that "[b]ecause at least some of the persons skipped should have received notices, a corresponding number of the most senior of the employees who were not reemployed must have been improperly given notices." (*Id.* at p. 711.) The court did not allow for the "domino effect" now sought by respondents. And such approach is rejected here.

The District should instead use the Governing Board's tie break criteria that allows for an objective lottery to determine placement on the seniority list. By so doing, of the eight respondents with an August 17, 2007 seniority date, only one would be retained due to the retention of Ms. Johnson, more if other teachers are later identified.

Teachers Holding District Intern or University Intern Credentials and Who Occupy Positions for Which Respondents are Competent and Credentialed

13. The District's Governing Board met on or around April 15, 2008, and determined at that time to release four interns, three holding a district intern credential, and

³ The District has also suggested that it may change the seniority dates of new teachers who did not attend the new teacher workshop to August 17, 2007. It reasons that since the August 17, 2007 workshop constituted a duty day, it should be considered by the District to be the date that attending and non-attending teachers first rendered paid service to the District. The District notes that the dictionary meaning of "rendered" includes being "made available." It also argues that because a teacher is entitled to draw compensation when a teacher does not report to work at any time during a contracted work year due to illness, duty days should likewise be calculated back to August 17, 2007. District seniority has precise meaning independent from laws governing leave time, and the District's arguments are therefore rejected. Similarly, the District's argument that non-attending teachers were "made available" and therefore rendered paid service is not persuasive.

⁴ The eight respondents are: Dayna Swanson, Milagros Medina, Amy Williams, Brenda K. James, Margaret Hamrick, Amanda Fleshman, Heather Donovan and Cynthia Cygan.

one holding a university intern credential.⁵ They were assigned to teach high school English (1.0 FTE), high school biological science (1.0 FTE), and eighth grade mathematics (2.0 FTE). None of these four classes were identified or included as part of the particular kinds of services to be reduced or discontinued for the 2008-2009 school year. The four interns were not issued layoff notices under Education Code sections 44949 and 44955. Thus, the District may consider these vacated positions in much the same way as it would consider other positively assured attrition.

Respondents suggest it is first necessary to find that the four interns were probationary employees in order for other teachers to move into their positions. It is not clear why such a finding is needed. If the vacated positions are not slated for PKS reductions, the District may reassign teachers into the positions. Still, in an abundance of caution, there was no evidence presented to indicate whether these teachers were serving under temporary employment contracts and therefore subject to annual release. For example, there was no evidence that any of the four were: 1) replacing a teacher on leave (Ed. Code, § 44920); 2) teaching in a temporary class (Ed. Code, § 44919, subd. (a)); 3) teaching in special day and evening adult classes (Ed. Code, § 44919, subd. (a)); 4) teaching in schools for migratory population (Ed. Code, § 44919, subd. (b)); 5) serving in a limited assignment supervising athletic activities (Ed. Code, § 44919, subd. (b)); or 6) serving in any other temporary situations identified in the Education Code.

Appellate courts have interpreted the temporary classifications narrowly, allowing districts to classify teachers as temporary only on the grounds provided in the Education Code. Thus, if a teacher does not satisfy the statutory grounds for a temporary classification, the default or catchall provision of Education Code section 44915 mandates that the district classify a teacher as a probationary employee. (*Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1279-1281; *California Teachers Association v. Vallejo City Unified School District* (2007) 149 Cal.App.4th 135, 146; *Vasquez v. Happy Valley Union School District* (2008) 159 Cal.App.4th 969, 981-986.)

With this in mind, the District is required to make assignments and reassessments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. (Ed. Code, § 44955, subd. (c).) And this includes potential assignment and reassignment into the positions made available by the departure of the four interns.

14. Respondent Jenna Daniels has a District Seniority date of August 29, 2007. She was noticed for layoff due to the reduction of K-5 Science by .7 FTE. Ms. Daniels holds a single subject credential for biological sciences. She is qualified to teach the high school

⁵ The teachers are: David Lynn Foxworthy, university intern with a single subject credential for biological sciences; Jared John Gonsalves, district intern with a single subject credential for mathematics; Holli Ann Little, district intern with a single subject credential for English; and Lori Janine Schleppenbach, district intern with a single subject credential for mathematics.

biological sciences class previously taught by David Lynn Foxworthy. No one with greater seniority than Jenna Daniels possesses the credentials and qualifications to move into the position. This may lead to a part-time bumping situation, if Ms. Daniels retains .3 FTE K-5 and takes only .7 FTE high school biological sciences. It is a matter better left for the District to work out with Ms. Daniels.

15. Three other teachers were identified as having credentials that would allow them to be reassigned next year to the two eighth grade mathematics classes, and one high school English class. Sandra K. Beckman holds a multiple subject credential with a supplementary authorization to teach mathematics (K-9). She is currently in an elementary school position. Rene McGrath also holds a multiple subject credential with a supplementary authorization to teach mathematics (K-9). She is currently in an elementary school position at Carlin C. Coppin Elementary School. Were Ms. Beckman and Ms. McGrath to be reassigned to teach eighth grade mathematics, two of respondent elementary school teachers could be assigned to teach their classes. Melanee Ford holds a multiple subject credential with a supplementary authorization to teach English. If she were reassigned to teach high school English, one of respondent elementary school teachers could be assigned to teach her class.

The District's release of the four interns results in four positions into which teachers may be reassigned. Respondent Jenna Daniels may be reassigned into high school biological sciences for the 2008-2009 school year.

The District has discretion as to whether additional assignments and reassignments should be made to save other junior teachers named as respondents. While the District has an affirmative obligation to reassign senior teachers who are losing their positions, it does not have the same obligation to reassign senior teachers who are not losing their positions in an effort to save junior teachers. In short, the District cannot be compelled to engage in inverse bumping and to reassign Sandra Beckman, Rene McGrath and Melanee Ford into the positions held by the three interns in order to save respondent elementary school teachers from losing their positions.

Other Matters Relating to Individual Teachers

16. Brenda James and Dayna Swanson teach kindergarten classes at Twelve Bridges and Lincoln Crossing Elementary Schools, respectively. They both attended a Kindergarten Workshop on August 15, 2007, from 8:00 a.m. to noon at Twelve Bridges Elementary School. All district kindergarten teachers were invited to attend. The purpose was to "collaboratively create a kindergarten assessment packet and rubric to use to assess students district-wide." Ms. Swanson was told that she "needed to attend." It appears that another teacher stated this to her. This particular program was subject to the District's professional development "buy-back hours" program. Both employees received four hours credit for their participation and were compensated for their time. Attendance was not mandatory. Given the nature of this particular workshop, Ms. James and Ms. Swanson are not entitled to change their seniority date based upon their attendance at same.

17. Milagros Medina is an elementary school teacher. She attended a six-hour GLAD Summer Planning program on August 8, 2007. This was a program designed to develop strategies for working with students in the District's English Language Learner program. Participation in this program was not mandatory. Ms. Medina received professional development credit (buy-back hours) for her attendance. She is not entitled to change her seniority date based upon her attendance at this program.

18. Melanie Riley is a band teacher at Lincoln High School. She holds a single subject music credential. When home economics was reduced, Cindy Hagman was reassigned from home economics into Ms. Riley's position. Ms. Hagman holds a single subject music credential with a CLAD. Ms. Hagman is also more senior to Ms. Riley and is therefore entitled to bump into her position.

Ms. Riley contests application of any tie-breaking criteria based upon her not having a CLAD. Ms. Riley finished her CLAD coursework in January 2008, and has submitted necessary documentation to the California Commission on Teacher Credentialing (CTC). She received confirmation from CTC that her application is pending evaluation.

Peggy VanLengen is the District's Personnel Account Technician. In mid-January 2008, she contacted Ms. Riley and inquired as to the status of her CLAD. Ms. Riley advised her that she would be done with the course by the end of the month. When Ms. Riley completed the course, she did not so advise the District. Ms. Riley believes that the District should credit her for having a CLAD pending. The District has done so for others. For example, Melissa Garcia is an elementary school teacher with a single subject music credential. She was credited with having a "CLAD pending" and is still taking the course toward CLAD certification, the test for which will be given in June 2008. Ms. Riley is obviously ahead of her and should also be credited with having a CLAD pending by the District. Although employees should bear the responsibility of updating their credentials/certifications on file with the District, this is an instance where Ms. Riley was asked by the District in mid-January about the status of her CLAD, and the District was on notice that she would have been finished with her CLAD coursework by the end of January 2008.

19. Amanda Fleshman is a second grade elementary teacher at Twelve Bridges Elementary School. She is currently enrolled and taking course work toward CLAD certification. The class will continue through May 2008, and the test will be given in June 2008. She is in the same class as Melissa Garcia and believes she also should be given status as CLAD pending. There is no evidence that she advised the District of these facts prior to March 15, and she should not be accorded CLAD pending status for this reason.

20. Thomas Kelley holds a pupil personnel services credential with a specialization in school counseling. He works a half day at Phoenix Continuation School, and a half day at Lincoln High School. He received a layoff notice because of the planned elimination of a high school counselor position. The Placer County Office of Education will be transferring a counselor position to the District next school year to work in the special

education area. In addition to holding a pupil personnel services credential, the counselor position will require additional certification in either behavior analysis or applied behavior analysis. Mr. Kelley holds neither of these additional certifications. He also notes that the CTC does not list either of these certifications on its website and he questions whether they can legitimately be required for this position. He is willing to pursue specializations if he is hired into the position.

The District has a need for a counselor to work with autistic children and who can conduct behavioral assessments for this population. Eli Gallup is the District's Director of Special Education. He explained the reasoning for having the special education counselor hold additional certifications in either behavior analysis or applied behavior analysis. In making reassessments, a district is permitted to consider the qualifications of an employee prior to making such reassignment. The District has articulated its rationale for not offering Mr. Kelley the special education counselor position. Mr. Kelley has not demonstrated that he is otherwise qualified to serve in that position.

21. The District applied tie-breaking criteria as between Kimberly Moss and Teresa Conroy in reducing physical education by 1.5 FTE. Both have the same seniority date. Ms. Moss holds a multiple subject credential with CLAD and a physical education authorization. Ms. Conroy holds a single subject credential in physical education. As a result of application of tie-breaking criteria, Ms. Conroy is deemed "more senior" to Ms. Moss. The single subject credential "trumps" the authorization for physical education. Thus, Ms. Moss was noticed for 1.0 FTE, and Ms. Conroy for the remaining .5 FTE.

22. With due consideration and adjustments made for the matters noted above, no permanent or probationary certificated employees junior to respondents are being retained to perform a service which respondents are certificated and competent to render. Those certificated employees junior to respondents being retained will provide services which respondents are not certificated and competent to perform.

LEGAL CONCLUSIONS

1. The District employees receiving notices that their services would not be required next year have all rendered services to the District.

2. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. 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* (1983) 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.)

3. The services identified in Board Resolution No. 07-08.14 are particular kinds of services (PKS) that could be reduced or discontinued under Education Code section 44955. The Governing 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 Education Code section 44949.

4. A District may reduce services within the meaning of Education Code 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. Education Code section 44955 provides in pertinent part:

¶...¶

(b) Whenever in any school year ... whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, ...or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

¶...¶

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

retaining junior teachers. Education Code section 44955, subdivision (c) provides in pertinent part:

Services of such employees shall be terminated in the inverse of the order in which they were employed... The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render...

7. As set forth in Factual Findings 10 through 12, the seniority date for the nine respondents who attended the new teacher workshop should be changed from August 20, 2007, to August 17, 2007. The District should also change the seniority date of other new teachers who attended the workshop from August 20, 2007, to August 17, 2007. After these adjustments are made, the District should rescind notices to the degree and extent that the August 17, 2007 seniority date places respondents above less senior teachers who were not given layoff notices and who occupy positions for which respondents are credentialed and competent.

The number of rescinded notices shall be determined according to the "corresponding number" standard contemplated under *Alexander v. Delano Joint Union High School District, supra*, 139 Cal.App.3d 567. The District is required to rescind at least one layoff notice since the August 17, 2007 seniority date places eight respondents above one less senior teacher, Pam Johnson, who was not given a layoff notice and who occupies a position for which respondents are credentialed and competent. The District should use the Governing Board's tie break criteria that includes an objective lottery to ascertain placement on the seniority list of one multiple subject teacher among the eight affected respondents. Only that single teacher should be retained as an employee for the 2008-09 school year, and more should additional teachers who are less senior be identified.

8. As set forth in Factual Findings 13 through 15, the District's release of the four interns results in four positions into which respondents Jenna Daniels and three others may be reassigned for the 2008-2009 school year. The District is required to make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. (Ed. Code, § 44955, subd. (c).) This includes potential assignment and reassignment into the positions made available by the departure of the four interns.⁶ Respondent Jenna Daniels should be

⁶ The four interns were not found to be temporary employees. (See Finding 13.) As noted earlier, appellate courts have interpreted the temporary classifications narrowly, allowing districts to classify teachers as temporary only on the grounds provided in the Education Code. Thus, if a teacher does not satisfy the statutory grounds for a temporary classification, the default or catchall provision of Education Code section 44915 mandates that the district classify a teacher as a probationary employee. (*Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1279-1281; *California Teachers Association v. Vallejo City Unified School District* (2007) 149 Cal.App.4th 135, 146; *Vasquez v. Happy Valley Union School District* (2008) 159 Cal.App.4th 969, 981-986.)

reassigned into high school biological sciences for the 2008-2009 school year. The District has discretion as to the other three positions.

9. As set forth in Factual Findings 16 and 17, the seniority dates of Brenda James, Dayna Swanson and Milagros Medina should not be changed on account of their attendance at the Kindergarten Workshop or the GLAD Summer Planning Program. Participation in these programs was not mandatory and the employees received professional development credit (buy-back hours) for their attendance. They are not entitled to change their seniority date based upon attendance at these programs.

10. As set forth in Factual Findings 18 and 19, Melanie Riley should be credited with CLAD pending status in any application of tie-breaking criteria. However, Amanda Fleshman shall not be so credited.

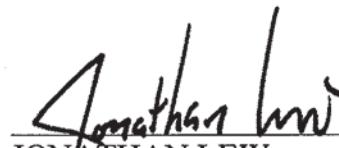
11. As set forth in Factual Finding 20, the District has met its initial obligation, under Education Code section 44955, subdivision (c), to make a determination whether Thomas Kelley's seniority and qualifications entitle him to be reassigned to the new special education counselor position. The District reasonably decided not to re-assign Mr. Kelley, based upon the District's need for a counselor with qualifications related to behavior analysis or applied behavior analysis. Mr. Kelley has not persuasively rebutted the District's decision not to assign him to this position. The District has established that no employee junior to Mr. Kelley is being retained to perform services which Mr. Kelley is competent and certificated to render.

12. Cause exists for the reduction of the particular kinds of services and for the reduction of 20.7 full-time equivalent certificated positions at the end of the 2007-2008 school year pursuant to Education Code sections 44949 and 44955. Therefore, and except as noted above in Legal Conclusions 7 through 10, cause exists to give respondents notice that their services will be reduced or will not be required for the ensuing 2008-2009 school year.

ORDER

Cause exists for the reduction of 20.7 full-time equivalent certificated positions at the end of the 2007-2008 school year. After making the adjustments set forth in Legal Conclusions 7 through 10, notice shall be given to remaining respondents that their services will be reduced or will not be required for the ensuing school year, 2008-2009, because of the reduction and discontinuance of particular kinds of services.

DATED: May 12, 2008



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings