

BEFORE THE
GOVERNING BOARD OF THE
VACAVILLE UNIFIED SCHOOL DISTRICT

In the Matter of the Accusation Against:

22 FTE CERTIFICATED EMPLOYEES OF
THE VACAVILLE UNIFIED SCHOOL
DISTRICT,

OAH No. N2004030256

Respondents.

PROPOSED DECISION

Catherine B. Frink, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on April 19, 2004 in Vacaville, California.

The Vacaville Unified School District was represented by Terry Filliman, Attorney at Law, Atkinson, Adelson, Loya, Ruud & Romo, 555 Capitol Mall, Suite 645, Sacramento, CA 95814.

Respondents were represented by Joan Maredyth, Attorney at Law, Maredyth & McCallum, 5820 Landis Avenue, Suite 3, Carmichael, CA 95608.

The record remained open pending submission of additional evidence and closing briefs. Documents pertaining to the job duties and qualifications of the Charter School Testing and Assessment Alignment Coordinator were received via facsimile on April 20, 2004 and April 22, 2004 and were marked collectively as Exhibit 6 in evidence. Respondents' brief was received on April 26, 2004 and was marked as Exhibit D for identification. The District's brief was received on April 29, 2004 and was marked as Exhibit 7 for identification. The record was closed and the matter was submitted for decision on April 29, 2004.

FACTUAL FINDINGS

1. John T. Aycock is the Superintendent of the Vacaville Unified School District ("District"). He made and filed the Accusation in his official capacity.

2. Each of the respondents listed on Attachment A, attached hereto and incorporated herein by reference, was at all times mentioned herein and now is a certificated employee of the District.

3. On March 4, 2004, the Governing Board of the District adopted Resolution No. 37, relating to the reduction or elimination of particular kinds of services, and directed the Superintendent to give notices to certificated employees that their services would not be needed for the 2004-2005 school year. The Governing Board of the District also adopted Resolution No. 38, Criteria for Order of Certificated Layoff and Reemployment Following Layoff for Employees with Equal Seniority ("tiebreaker criteria").¹

4. On March 13, 2004, respondents were served in the manner prescribed by law with written notice that it had been recommended that notice be given to them that their services would not be required for the ensuing 2004-2005 school year. The Notice stated the reasons for such recommendation, and Board Resolution No. 37 was attached to the Notice.

5. Respondents, within the time limit specified in Education Code section 44949, subdivision (b), requested a hearing to determine if there is cause for not reemploying them for the ensuing school year.

6. The parties stipulated that all pre-hearing jurisdictional requirements were satisfied.

7. Pursuant to Board Resolution No. 37, 2003-2004, the Governing Board of the District decided to reduce or eliminate particular kinds of services (34 Full Time Equivalent positions) ("FTE") of the District beginning not later than the commencement of the 2004-2005 school year as follows:

13 FTE	Elementary Education
1 FTE	Enrichment Elementary Preparation
5 FTE	Music
8 FTE	Special Education with only Waivers, Emergency Permits or Pre-Intern/Intern Permits
1 FTE	Testing and Assessment Alignment Coordinator
6 FTE	Nurses

8. The Pre-Hearing Brief filed on behalf of the District stated that, as of the date of hearing, the District is proposing to lay off approximately 22 FTE certificated employees, as follows:

4.2 FTE	Music
4.8 FTE	Nurses
13.0 FTE	Elementary Education

¹ The tiebreaker criteria was not utilized in determining the order of layoffs in this proceeding.

Although the Board Resolution lists additional services being cut and additional FTE positions being reduced, those proposed reductions have been withdrawn.

9. The Governing Board of the District determined to exempt from elimination or reduction the following classes of teachers:

- a. Certificated teachers holding Bilingual, Cross-cultural, Language and Academic Development (BCLAD) Credential or authorization, or who are currently in training for BCLAD Credential or authorization as of March 1, 2004.
- b. Special Education Teachers who hold a Preliminary or Clear Teaching Credential, and all Special Education Teachers who hold Emergency Permits, Waivers, or Pre-Intern/Intern Permits who are currently enrolled in a credentialing program, making progress toward a Special Education Credential, and can submit verification from their college or university by March 12, 2004.
- c. Independent Study Teachers in the Ulatis Transitional Program at the Ulatis Alternative Education Center.

10. The District is facing its third year of budget cuts. According to Ron Hawkins, the Assistant Superintendent of Personnel for the District, the District is facing a \$3.5 million budget deficit. The District is taking steps to resolve its budget crisis, apart from the reduction in certificated personnel, including closing an elementary school with low enrollment.

11. Education Code section 44955 states in pertinent part as follows:

“...

“(b)...whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year,...and when in the opinion of the governing board of the district it shall have become necessary...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.

“...

“(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be

terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

“The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee’s major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

“(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

“(1) The district demonstrates a specific need for personnel to teach a specific course or course of study,... and that the certificated employee has special training and experience necessary to teach that course or course of study... which others with more seniority do not possess.

“...”

Reduction in Music

12. The District sent layoff notices to certificated probationary and permanent employees occupying 3.8 FTE music teacher positions. As a precaution, the District also sent a layoff notice to respondent Ron Nikiado, who is currently employed as a .4 FTE music teacher, for a total reduction in music of 4.2 FTE. Respondent Nikiado is a substitute teacher in a categorical position. He did not challenge his status as a temporary employee at hearing. He is not entitled to the rights and protections afforded probationary and permanent certificated employees under the Education Code as it pertains to these layoff proceedings, and he may be released from employment by the District at the end of the 2003-04 school year. The remaining music teachers noticed for layoff hold single subject music credentials or, in one case, a life standard elementary music credential. Except as noted in Finding 33 below, they are not entitled, by virtue of their seniority and qualifications, to serve in any other position with the District. The District’s decision to lay off 3.8 FTE music teachers (excluding respondent Nikiado) is upheld.

Reduction in Nurses

13. The District sent layoff notices to certificated employees occupying 4.8 FTE school nurse positions. Except as noted in Finding 29, none of the school nurses are entitled by virtue of their seniority and qualifications, to serve in any other position with the District.

14. The District proposes to reduce the current 11.7 FTE nurses by 4.8 FTE (41 percent). After the reduction, 6.9 FTE nurses will remain. Approximately .7 FTE of the service is used for Head Nursing functions, leaving 6.2 FTE for regular nursing functions. This equates to 1140 work days (184×6.2 FTE). There are approximately 14,000 students in the District.

15. Education Code section 49422(a) states that, "[n]o physician, psychiatrist, oculist, dentist, dental hygienist, optometrist, otologist, podiatrist, audiologist, or nurse not employed in that capacity by the State Department of Health Services, shall be, nor shall any other person be, employed or permitted to supervise the health and physical development of pupils unless he or she holds a services credential with a specialization in health or a valid credential issued prior to the operative date of Section 25 of Chapter 557 of the Statutes of 1990." Education Code section 49426 states in pertinent part that, "...School nurses may perform, if authorized by the local governing board, the following services:

"(a) Conduct immunization programs pursuant to Section 49403 and assure that every pupil's immunization status is in compliance with the law, including parental or guardian consent, and good health practice.

"(b) Assess and evaluate the health and developmental status of pupils to identify specific physical disorders and other factors relating to the learning process, communicate with the primary care provider, and contribute significant information in order to modify the pupils' educational plans.

"(c) Interpret the health and developmental assessment to parents, teachers, administrators, and other professionals directly concerned with the pupil.

"(d) Design and implement a health maintenance plan to meet the individual health needs of the students, incorporating plans directed by a physician.

"(e) Refer the pupil and his or her parent or guardian to appropriate community resources for necessary services.

"(f) Maintain communication with parents and all involved community practitioners and agencies to promote needed treatment and secure reports of findings pertinent to educational planning.

“(g) Interpret medical and nursing findings appropriate to the student's individual educational plan and make recommendations to professional personnel directly involved.

“(h) Consult with, conduct in-service training to, and serve as a resource person to teachers and administrators, and act as a participant in implementing any section or sections of a comprehensive health instruction curriculum for students by providing current scientific information regarding nutrition, preventive dentistry, mental health, genetics, prevention of communicable diseases, self-health care, consumer education, and other areas of health.

“(i) Counsel pupils and parents by:

“(1) Assisting children and youth, parents, and school personnel in identifying and utilizing appropriate and mutually acceptable private and community health delivery services for professional care and remediation of defects.

“(2) Counseling with parents, pupils and school staff regarding health-related attendance problems.

“(3) Helping parents, school personnel and pupils understand and adjust to physical, mental and social limitations.

“(4) Exploring with families and pupils, attitudes, information and values which affect their health behavior.

“(j) Assist parents and pupils to solve financial, transportation and other barriers to needed health services....”

Education Code section 49426 lists services a school nurse **may** perform, not services that **must** be performed by a school nurse.

16. There are certain services that must be provided by a school district (“mandated services”). However, it is not required that certificated nursing staff perform all of these mandated services. Among the services which the District is mandated to provide are screening services, including referral, follow up and reporting requirements, i.e. vision screening (Education Code sections 49452 and 49455) for all students in grades K, 1, 3, 6, 8, 10 and all special education 504 assessments, plus yearly assessments of students in special education and/or who receive speech and language services; hearing screening (Education Code section 49453) for all students in grades K, 2, 5, 8, 10 and all special education 504 assessments, plus yearly assessments of students in special education and/or who receive speech and language services; color vision screening (Education Code sections 49452 and 49455) for all boys in first grade; and scoliosis screening (Education Code sections 49452.5 and 49422) for all 7th grade girls and 8th grade boys. Other mandated services include assessment of students with health problems and preparation of Individual Health Services

Plans; performance of specialized health care procedures (either directly by nurse, or by another individual who is trained and monitored by nurse); medication training and oversight of medication administration; staff training in universal precautions and child abuse reporting; child abuse reporting; initial health and developmental assessments on students being assessed for special education, with updates every three years; participation in IEP team meetings; preparing mandated reports for 7th grade immunizations; services to Vacaville students in non public school placements; and services to preschool students with special needs.

17. In addition to mandated services, the current staff of certificated nurses provides services for the District that are not mandated, which may not be provided as a consequence of the layoff of nurses by the District. These services include follow-up on truancy, some home visits, follow up for students with lice, and participation in student study teams.

18. Respondents contend that the reduction contemplated by the District will reduce the nursing staff below the level needed in order to provide mandated services. Margaret Pay, head nurse for the District, testified that many of the services now provided by school nurses will not be able to be performed by a reduced staff. As one example, she estimated that approximately 70 percent of nursing staff time is devoted to tasks related to special education students. However, the evidence did not establish that every task currently performed by nursing staff for special education students is a "mandated service," or that some of those services could not be performed by someone other than a school nurse. The Governing Board has the discretion to determine how and in what manner mandated services are to be provided. *See, Campbell Elementary Teachers Association v. Abbott*, (1978) 76 Cal.App.3d 796, 811-12; *Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571, 1582-90.

19. The District has made no final decision about how the duties will be assigned to remaining nursing and other staff. The District is considering various options, including the contracting out of some mandated services if necessary, and the delegation of some functions to other District staff, under the supervision of certificated nurses.² The work assignments of the retained nurses will change as a result of the reduction in nursing staff and they will be required to perform many functions in a different manner. In the absence of any evidence as to how the District intends to deliver the required services, it is premature to consider whether the District will or will not meet the statutory requirements. Evidence Code section 664 establishes a presumption that the action or official duties of a public entity, such as the District and its Governing Board, have been regularly performed. *Degener v. Governing Board* (1977) 67 Cal.App.3d 689, 696. The District's decision to lay off 4.8 FTE nurses must be upheld.

² Respondents contend that any action by the District to provide mandated services by contracting work performed by school nurses targeted for layoff to outside entities would violate Article 19.1.6 of the collective bargaining agreement between the District and the Vacaville Teachers Association/CTA/NEA. The potential violation of the collective bargaining agreement is an issue which is beyond the scope of this layoff proceeding and must be resolved in another forum. *See, Government Code section 3540 et seq.*

Reduction in Elementary Education

20. As the language of Education Code section 44955 reflects, economic layoffs are generally to be done on the basis of seniority. 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. In order to depart from a seniority-based economic layoff, Education Code section 44955(d)(1) requires the District to “demonstrates a specific need for personnel to teach a specific course or course of study... and that the certificated employee (to be skipped) has special training and experience necessary to teach that course or course of study...which others with more seniority do not possess.”

21. The District prepared a “bumping chart” to determine the employees who would be given layoff notices to effectuate the proposed reduction of 13.0 FTE Elementary Education. The District issued Notices to the 17 least senior Multiple Subject (“MS”) credentialed teachers who did not have other specific credentials that would permit them to be retained, or “skipped” by the District.

Exemption of Teachers Holding BCLAD

22. The District did not send layoff notices to seven teachers who hold MS credentials with BCLAD credentials or authorizations who would have otherwise been subject to layoff based upon their seniority dates.³ Six of these teachers have served during the 2003-04 school year in the District’s Dual Spanish-English Immersion Program (“Dual Immersion Program”), for which a BCLAD is required. One teacher, Loretta Meyer-Taylor, is currently assigned to a 5/6 combination classroom, for which a BCLAD is not required. The Dual Immersion Program requires intensive teacher instruction in both Spanish and English and is required to be offered as an alternative to English language programs for English learner (“EL”) students.⁴ The District expects to expand the Dual Immersion Program for the 2004-05 school year by at least one additional classroom, for which a BCLAD-credentialed teacher would be required.

23. The Dual Immersion Program is a “particular course or course of study” within the meaning of Education Code section 44955(d)(1). The evidence established that there is a specific need for employees with BCLAD credentials or authorizations to teach in the Dual Immersion Program for the 2004-05 school year. The District is entitled to deviate from seniority order and to skip teachers holding BCLAD credentials or authorizations, including Loretta Meyer-Taylor, specifically to teach in the Dual Immersion Program. The teachers holding BCLAD credentials have special training and experience necessary to teach

³ Loretta Meyer-Taylor, Gricelda Rodriguez, Maria Rosa Serrano, Sofia Felix-Hatfield, Danesa Montana, Juana Saunders-Caldera and DJ Whaley

⁴ According to Education Code section 306(a), an “English learner” means “a child who does not speak English or whose native language is not English and who is not currently able to perform ordinary classroom work in English, also known as a Limited English Proficiency or LEP child.” See also, Education Code section 310.

that particular course or course of study that is not possessed by more senior certificated personnel holding MS credentials.

Teacher "Currently in Training for BCLAD Credential or Authorization"

24. Norma Guerrero is a certificated employee noticed for layoff. She holds a Preliminary MS credential with CLAD emphasis, and an Emergency BCLAD. For the 2003-04 school year, she has taught a third grade Dual Spanish-English Immersion class. Respondent Guerrero is enrolled in courses at Chapman College to obtain her master's degree. Respondent Guerrero is scheduled to take the BCLAD examination on May 8, 2004. She is not aware of any particular course of study or curriculum that specifically "trains" a teacher for a BCLAD. She believes the coursework she has taken for her advanced degree has prepared her to take the BCLAD examination. By working in the Dual Immersion Program this school year, she has demonstrated that she has special experience necessary to teach that particular course or course of study within the meaning of Education Code section 44955(d)(1).

25. As part of Board Resolution No. 37, the Governing Board of the District determined that "Certificated teachers...who are currently in training for BCLAD Credential or authorization as of March 1, 2004" were exempt from elimination or reduction. The District argued at hearing that respondent Guerrero was not "currently in training" for a BCLAD credential or authorization because possession of an emergency BCLAD did not constitute "training" for BCLAD credential or authorization and, in the absence of a specific course of study, "training" for BCLAD meant having taken the BCLAD test. The District further contends that Board Resolution No. 37 reflected an erroneous assumption, namely, that there was a training program for certificated personnel seeking BCLAD certification. The District's arguments are not persuasive. Respondent Guerrero falls within the express language of the Governing Board's exemption in Board Resolution No. 37 as a certificated teacher currently in training for BCLAD credential or authorization as of March 1, 2004, and she is entitled to be retained by the District to teach in the Dual Immersion Program for the 2004-05 school year.

Exemption of Independent Study Teacher in the Ulatis Transitional Program

26. Susan Hoover, seniority date January 5, 2004, holds a single subject social science credential with a supplemental authorization in introductory mathematics. She did not receive a layoff notice from the District and will be retained for the 2004-05 school year. She is assigned to the Ulatis Transitional Program in an independent study position created in January of 2004 to find students who are not currently attending school and transition them back to the District through independent study over a period of 60 to 80 days. Ms. Hoover has a background as an independent study teacher in middle school and high school; she has worked in a continuation program of teen mothers, and in an independent study project through the county day school.

27. Education Code section 44865 provides in part that, "[a] valid teaching credential issued by the State Board of Education or the Commission for Teacher Preparation and Licensing, based on a bachelor's degree, student teaching, and special fitness to perform, shall be deemed qualifying for assignment as a teacher in the following assignments, provided that the assignment of a teacher to a position for which qualifications are prescribed by this section shall be made only with the consent of the teacher:... (f) Alternative schools...."

28. The District established that Ms. Hoover has special fitness to perform the independent study position in the Ulatis Transitional Program. Respondents failed to establish that any respondent had special fitness to perform the position currently held by Ms. Hoover in order to bump her from that position. Furthermore, the District established that the transitional independent study program created by Ms. Hoover is a "particular course or course of study" within the meaning of Education Code section 44955(d)(1). The evidence established that there is a specific need for an employee to teach this course, and that Ms. Hoover has special training and experience necessary to teach that particular course or course of study that is not possessed by more senior certificated personnel.

Bumping Rights

29. Respondent Taryn Carter was issued a layoff notice by the District. She is currently employed 1.0 FTE as the Testing and Assessment Alignment Coordinator ("Testing Coordinator") for Buckingham Charter School and has served in that position since its creation on December 4, 2000. The Testing Coordinator position is not being reduced or eliminated by the District; however, due to her level of seniority, respondent Carter is subject to bumping by a more senior certificated employee whose position is being reduced or eliminated. Although the job description/posting related to the Testing Coordinator position specified "certificated personnel," the evidence did not establish what, if any, credential was required for the position. The most senior certificated employees noticed for layoff are school nurses, Pam McGoveny (.8 FTE), seniority date September 4, 1990, and Cynthia Wesp (1.0 FTE), seniority date September 11, 1991. The District suggested in written closing argument that respondents be given final notices of layoff and that individual respondents be offered rehire into the Testing Coordinator position by seniority with the opportunity to decline because of the unique duties of the position. However, Education Code section 44955(c) requires that "[t]he 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." In this case, the District shall be required to offer the Testing Coordinator position to respondent McGoveny for .8 FTE and to respondent Wesp for .2 FTE and, if accepted, they shall be retained to perform the service as set forth herein. If respondent McGoveny declines, then she shall be laid off and respondent Wesp shall be offered the Testing Coordinator position for 1.0 FTE. If respondent Wesp declines, she shall be laid off; if both of them decline, they shall be laid off, and the District shall be entitled to offer rehire to individual respondents into the Testing Coordinator position by seniority.

30. Respondent Anne Silva, seniority date August 26, 2002, was issued a layoff notice by the District. She holds a MS credential and is assigned to .6 FTE in an enrichment preparation position and .2337 FTE as a fourth grade teacher, for a total of .8337 FTE. She is subject to layoff in her .2337 FTE fourth grade teaching position as a result of the District's reduction in Elementary Education. Her .6 FTE enrichment preparation position was not reduced or eliminated by the District, but due to her level of seniority, respondent Silva is subject to bumping by a more senior certificated employee whose position is being reduced or eliminated. Respondent Margaret Bernard, seniority date August 28, 1997, is the most senior teacher with a MS credential designated for layoff due to the reduction in Elementary Education. She is entitled to bump respondent Silva from her .6 FTE enrichment preparation position, and shall be retained to provide that service for the 2004-05 school year (.6 FTE).

31. Respondent Robert Minor, seniority date August 28, 1997, was issued a layoff notice by the District as a result of the District's reduction in Elementary Education. He holds a MS credential with a supplemental authorization in English. He is currently assigned to 1.0 FTE position as an elementary teacher in a 5/6 combination class. Respondent Marcia Wynes is the least senior 7-8 English teacher in the District (1.0 FTE). She holds an Emergency Single Subject English/Art credential. Respondent Minor is entitled to bump respondent Wynes from her 7-8 English position, and shall be retained to provide that service for the 2004-05 school year (1.0 FTE).

32. Respondents contend that they should be permitted to bump Andrew Bower, a less senior teacher in the District's alternative education program. The District contends that teachers serving in the alternative education program should not be subject to bumping because none of the respondents has consented to an assignment to the alternative education program.

California Teachers' Association v. Governing Board of Central Union High School District (1983) 141 Cal.App.3d 606 held that Education Code section 44865 requires teacher consent for certain assignments outside the initial authority of the credential, but does not require consent for those assignments by teachers whose credentials already contain authority for such assignments. "The purpose of section 44865 is similar to the other enumerated sections in that it is designed to expand rather than restrict the authority of the school board to place willing individuals in job assignments *outside* the scope of their respective credentials." (emphasis in original) (141 Cal.App.3d at page 615). The consent requirement adds a layer of protection for the teacher; the court noted that, "[t]here is good reason for the requirement of consent if a teacher is assigned outside the scope of his or her expertise. Evaluation is made on the basis of performance of the assigned task. A teacher may be unwilling to risk a critical evaluation while teaching outside the ambit of his or her credential." (141 Cal.App.3d at page 612). Thus, Education Code section 44865 acts as a shield to protect a teacher whose credentials do not contain authority for an assignment from involuntary placement in such an assignment. The question remains whether, and under what circumstances, it can become a sword to allow a teacher to serve in a position outside the initial authority of his or her credential. The statute requires teacher consent to the

assignment, plus a valid teaching credential based on (1) a bachelor's degree, (2) student teaching and (3) special fitness to perform.

33. Andrew Bower, seniority date September 19, 2000, holds a single subject social science credential and teaches high school alternative education. He did not receive a layoff notice from the District and will be retained for the 2004-04 school year. The exact nature of his teaching assignment was not established by the evidence. He has experience in the alternative education program with the District and has worked with homeless students and other troubled students through the probation department. It was not established that any special qualifications are needed to teach high school alternative education. Thus, a respondent with greater seniority than Mr. Bower who holds a valid teaching credential and consents to the assignment would be entitled to "bump" Mr. Bower from his position. The two most senior credentialed teachers noticed for layoff are Sue MacDonald (.6 FTE), seniority date August 28, 1996, and Christine Thomas (1.0 FTE), seniority date August 26, 1997. Both hold single subject music credentials. Neither testified at the administrative hearing, and neither had consented to an assignment in the alternative education program as of the date of hearing.

The District shall be required to offer the high school alternative education position to respondent MacDonald for .6 FTE and to respondent Thomas for .4 FTE and, if accepted, they shall be retained to perform the service as set forth herein. If respondent MacDonald declines, then she shall be laid off and respondent Thomas shall be offered the high school alternative education position for 1.0 FTE. If respondent Thomas declines, she shall be laid off; if both of them decline, they shall be laid off, and the District shall be entitled to offer rehire to individual respondents into the high school alternative education position by seniority.

34. Susan Lloyd, seniority date December 16, 1997, holds a MS credential. She is assigned to 1.0 FTE 4/5/6 Structured English Immersion class. She believes she has special qualifications to serve in this classroom because she is fluent in Spanish. However, any teacher with a MS credential can be assigned to teach in a Structured English Immersion class. She did not establish any basis to require the District to retain her for the 2004-05 school year.

Other Matters

35. Except as noted above, no certificated employee junior to any respondent is retained to perform services which any respondent is certificated and competent to render.

36. The reduction or discontinuation of services is related to the welfare of the District and its pupils within the meaning of Education Code sections 44949 and 44955. The decision to reduce or discontinue these services is neither arbitrary nor capricious, but rather a proper exercise of discretion of the District Superintendent and Governing Board.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. As set forth in Findings 20-23, the District may retain the services of certificated employees in the 2004-05 school year regardless of seniority who possess BCLAD credential or authorizations.

3. As set forth in Findings 24-25, the District shall retain the services of Norma Guerrero, a certificated employee currently in training for BCLAD credential or authorization as of March 1, 2004, and the accusation with regard to Norma Guerrero is dismissed.

4. As set forth in Findings 26-28, the District may retain the services of Susan Hoover, an independent study teacher in the Ulati Transitional Program at the Ulati Alternative Education Center.

5. By reason of the facts set forth in Finding 30, Margaret Bernard shall be retained in .6 FTE and shall be laid off .4 FTE, as a result of her right to bump into a position held by a certificated employee with less seniority that she is certificated and competent to perform.

6. By reason of the facts set forth in Finding 31, the accusation with regard to Robert Minor is dismissed, as a result of his right to bump into a position held by a certificated employee with less seniority that he is certificated and competent to perform.

7. As a result of the facts set forth in Finding 29, the District shall be required to retain respondent(s) occupying 1.0 FTE Testing Coordinator position. The District shall be required to offer the Testing Coordinator position to respondent Pam McGoveny for .8 FTE and to Cynthia Wesp for .2 FTE and, if accepted, they shall be retained to perform the service as set forth herein. If Pam McGoveny declines, then she shall be laid off and Cynthia Wesp shall be offered the Testing Coordinator position for 1.0 FTE. If Cynthia Wesp declines, she shall be laid off; if both of them decline, they shall be laid off, and the District shall be entitled to offer rehired to individual respondents into the Testing Coordinator position by seniority.

8. As a result of the facts set forth in Findings 32 and 33, the District shall be required to retain respondents occupying 1.0 FTE high school alternative education position. The District shall be required to offer the high school alternative education position to Sue MacDonald for .6 FTE and to Christine Thomas for .4 FTE and, if accepted, they shall be retained to perform the service as set forth herein. If Sue MacDonald declines, then she shall be laid off and Christine Thomas shall be offered the high school alternative education position for 1.0 FTE. If Christine Thomas declines, she shall be laid off; if both of them

decline, they shall be laid off, and the District shall be entitled to offer rehire to individual respondents into the high school alternative education position by seniority.

9. Cause exists to reduce the number of certificated employees of the Vacaville Unified School District due to the reduction or discontinuation of particular kinds of services. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

1. The accusations against Norma Guerrero and Robert Minor are dismissed pursuant to Legal Conclusions 3 and 6. They shall be retained for the 2004-05 school year.

2. The District shall comply with Legal Conclusions 5, 7 and 8.

3. Except as noted above, notices shall be given to respondents that their services will not be required for the 2004-05 school year because of reduction or discontinuation of particular kinds of services.

DATED: 5-6-04

Catherine B. Frink

CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A
VACAVILLE UNIFIED SCHOOL DISTRICT
RESPONDENTS TO HEARING

Jennifer Allard
Kimberly Belk
Margaret Bernard
Mary Burrell
Taryn Carter
Lisa Colombani
Victoria DeLaFuente
Janet Fafard
Ann Fincke
Norma Guerrero
Denice Haddox
Andrew Herout
Douglas Jaynes
Susan Lloyd
Susan MacDonald
Dawn Marsh
Glenda Mazzuca (withdrew)
Pamela McGovern
Stephen Millington (Prob-0)
Robert Minor
Kathryn Morrell
Danielle Scheper
Darian Schwieger
Ann Silva
Ivan Simmons
Christine Thomas
Cynthia Wesp
Marcia Wynes (Prob-0)

Ronald Nikaido (temporary)
Yana Silvia (temporary)