

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

In The Matter Of The Accusation Against:

Billy Aguilar
Zvart Alexan
Veronica Alfaro
Veronica Andrade
Kara Armijo
Heather Beard
Christine Blewett
Jessica Chessani
Maria Cid-Castro
Lilia Cisneros
Jeff Day
Jennifer Del Bono
Meng Ear
Maya Escudero
Lindsey Ewing
Joseph Guzicki
Debra Hopf
Leslie King
Marah Kuwada
Alexandra Laks
Jennifer Legris
Kyra Lewis
Anita Lopez
Peter Madden
Donya Malorino
Craig Martin
Francisca Martinez-Garcia
Julissa Mendoza
Fabian Morales
Kenneth Mullen
Alyson Nowalk
Justin Ponzio
Rosemary Ramon
Marcy Ratliff
David Roberts
Pamela Rogers

OAH No. 2008030553

Timothy Rose
Shelley Seibert-Walton
Eric Simonsen
Adriana Torres
Jackeline Valdez
Claudia Valencia
Julio Villalobos
Gayle Vinyard
Marwa Yousofzoy
Dessie Zanger

Respondents.

PROPOSED DECISION

M. Amanda Behe, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 14 and 15, 2008, at the Gilroy Unified School District, Gilroy, California.

James Lynch, Garcia, Calderon & Ruiz, LLP, represented the Gilroy Unified School District.

Michelle Welch, Attorney at Law, represented respondent members of the Gilroy Education Association, California Teachers Association.

Prior to the hearing the Accusations served upon respondents Veronica Andrade, Heather Beard, Jeff Day, Jennifer Del Bono, Meng Ear, Peter Madden, Kenneth Mullen, Shelley Seibert-Walton and Marwa Yousofzoy were withdrawn. During the hearing the District withdrew the Accusations against respondent counselors Donya Malorino, Rosemary Ramon, Marcy Ratliff, Jackeline Valdez, and Kara Armijo; and against respondent psychologists Leslie King, Anita Lopez, Pamela Rogers, Timothy Rose, Eric Simonsen, and Joseph Guzicki. The District further stipulated that it would not proceed against non-respondent counselors Veronica Alfaro (Galvan), Anabel Arreola, Dianne Padilla, and Frank Valadez; and non-respondent psychologist Keith Roybal.

The matter was submitted on April 16, 2008.

FACTUAL FINDINGS

1. Deborah Ann Flores, Ph.D., has been Superintendent of the Gilroy Unified School District since July 1, 2007. Superintendent Flores filed the Accusations against respondents, all certificated employees of the District, in her official capacity.

2. Each respondent timely requested in writing a hearing to determine if there is cause for not reemploying him or her for the ensuing school year. Accusations were timely served on respondents, and each respondent filed a timely Notice of Defense.

3. Superintendent Flores recommended to the Governing Board that the District reduce particular kinds of services no later than the beginning of the 2008-09 school year. The agenda for a scheduled Governing Board meeting on March 6, 2008, listed proposed Resolution No. 07/08028 "Reduction of Particular Kind of Service" as a matter for Board consideration. The agenda, with the proposed resolution, was distributed to members of the Governing Board, the president of the Gilroy Education Association, and others, and was also posted. Although the proposed resolution referred to and incorporated by reference "Exhibit A" and "Exhibit B," none were posted with the resolution or sent with the resolution to the Board members or others.

4. On March 6, 2008, the Governing Board adopted Resolution No. 07/08-28 which provided for the reduction of the following particular kinds of services for the 2008-09 school year:

Kind of Service	Number of Full-Time Equivalent Positions ("FTEs")
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General Fund

Academic Coordinator	.12
Counselor	.18
School Psychologist	1.25
Assistant Principal Gilroy High School	1.00

Elementary Schools

Elementary Band	1.40
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Middle Schools

Math	3.00
Life Skills	3.67
Spanish	1.00
Art	1.17
Computers	1.50
Choir	.50
Consumer/Family Education	1.17

Gilroy High School

On Campus Suspension Center Teacher	1.20
Second prep period for SDC and RSP teachers	1.00
English	2.00

Social Science	2.00
Spanish	1.00
Art	0.40
Math	1.00

Total General Fund FTE **24.56**

Categorical Funds

District

BTSA Advisor	2.00
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Elementary Schools

Relief Teacher	1.00
Intervention Teacher	1.50
Literacy Facilitator	3.00

Middle Schools

AVID	.34
Literacy Facilitator	2.50
Math Facilitator	.84
New Teacher Coach	1.00

Gilroy High School

Literacy Facilitator	1.00
ROP Law Enforcement	0.20
Cal Soap Counselors	4.00

Total Categorical FTE **17.38**

Resolution No. 07/08-28 further provided, at paragraph C, that there was a specific need for personnel to teach specific courses of study and to retain certificated employees possessing the special training and experience needed to teach such courses that other employees with more seniority do not possess, and that "The specific needs of the District in this respect are set forth in Exhibit A to this Resolution and are incorporated as though fully set forth herein." Paragraph D of the resolution stated:

In accordance with California Education Code Section 44955(d)(1), the Board has determined that the Reduction in Force shall not include any permanent or probationary certificated employee who, by his/her training, experience, and assignment, is described within Exhibit A to this Resolution.

Despite the two specific references to Exhibit A, and its incorporation by reference in the resolution, Exhibit A was not attached to Resolution No. 07/08-28 when it was reviewed and voted on by the Governing Board.

Resolution No. 07/08-28 also provided, at paragraph E, that to implement the reduction "it may be necessary to apply tie-breaking criteria to distinguish among certificated employees who first rendered paid probationary service to the District on the same date. Paragraph E further stated that the order of layoff between such employees with the same date of first paid service shall be established on the basis of criteria "set forth in Exhibit B to this Resolution, which are incorporated as though fully set forth herein." Paragraph F addressed the same topic and stated:

The criteria set forth in Exhibit B to this Resolution shall also be used to determine the order of reemployment among those certificated employees who first rendered paid probationary service to the District on the same date. The Superintendent, or his [*sic*] designee, has the discretion to determine the appropriate weight of such criteria and the order in which such criteria are most relevant to serve the needs of the District and students in each tie-breaking situation.

Despite the specific references to Exhibit B, and its incorporation by reference in the resolution, Exhibit B was not attached to Resolution No. 07/08-28 when it was reviewed and voted on by the Governing Board.

Superintendent Flores had no explanation for the failure to include Exhibits A and B to the recommended resolution when it was distributed with the Board's agenda, or when it was posted, or when it was voted on the Board. She testified "we neglected to attach it." No evidence was offered to suggest the Board noted or did not note the absence of Exhibits A and B when they voted on Resolution No. 07/09-28.

Paragraph H of Resolution No. 07/08-28 directed the superintendent to send appropriate notices to all employees affected by the reduction in particular kinds of services in accordance with the Education Code and to take all necessary action to implement the resolution.

5. The District maintains a Seniority List which identifies employees' seniority dates (first date of paid probationary service), current assignments and locations, credentials, and authorizations. District staff reviewed credential and authorization data from the personnel records and, in response to a letter from the Gilroy Education Association, investigated whether some individuals were improperly classified as temporary employees. As a result of that reevaluation some employees were reclassified.

Using the Seniority List, District staff began implementation of the reduction of particular kinds of services approved by the Governing Board, and identified the incumbent

employees in the areas to be reduced. Generally, a senior certificated employee whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. District Staff determined if the affected incumbents had rights to bump junior employees. District staff identified the certificated employees to receive notices that their services would not be required for the 2008-09 school year.

6. On March 12, 2008, Dr. Flores notified respondents of her recommendation to the Governing Board that their services would not be required for the 2008-09 school year. Her notice letter advised that the notice was given pursuant to Education Code sections 44949 and 44955, and included copies of those provisions.

The Superintendent's letter further stated that "the reason for this recommendation is that the Governing Board, by Resolution No. 07/08-28, adopted on March 6, 2008, has determined to reduce particular kinds of services of the District no later than the beginning of the 2008-09 school year. A copy of this Resolution is enclosed and is incorporated in this notice as though fully set forth herein. Although Resolution No. 07/08-28 referred to Exhibit A and Exhibit B, and incorporated both by reference, neither was included in the notice letters sent to respondents.

7. Respondents were twice served with Accusation packets. On March 22, 2008, each respondent was served with an Accusation, copies of related provisions of the Education Code, and a copy of Board Resolution No. 07/08-28. Although Resolution No. 07/08-28 referred to Exhibit A and Exhibit B, and incorporated both by reference, neither was included in the Accusation packets served on March 22, 2008.

8. On a date not identified on the record, but apparently between March 22 and March 27, 2008, Superintendent Flores became aware of the failures to attach Exhibit A and Exhibit B to Resolution No 07/08-28.¹ On March 27, 2008, respondents were served with a "DUPLICATE MAILING NOTICE" which stated that:

This Accusation packet is being sent to you to replace a previous Accusation packet mailed to you on March 22, 2008. The previous mailing omitted certain pages from the Accusation documents.

The March 27, 2008, Accusation packet included Board Resolution No. 07/08-28, Exhibit A captioned "'SKIPPING' CRITERIA PURSUANT TO EDUCATION CODE SECTION 44955(d)(1)," and Exhibit B captioned "TIEBREAKING CRITERIA PURSUANT TO EDUCATION CODE SECTION 44955(B)." On March 27, 2008, the Governing Board had not yet adopted Exhibit B.

¹ See Factual Findings 2, 3, and 4, above.

9. The Governing Board never adopted Exhibit A, which in general allowed for “skipping” certificated employees with science or math credentials who are teaching those subjects and are expected to do so in the 2008-09 school year, and certificated employees with a Bilingual Cross-cultural Language and Development (BCLAD) certificate who are teaching one or more bilingual classes and are expected to do so in the 2008-09 school year. Superintendent Flores testified that adoption of Exhibit A was unnecessary because by the time she became aware of the error decisions regarding who would be laid off had already been made, and the District “had accomplished what [it] would have done if [it] had used [Exhibit A].”

10. A special board meeting was scheduled for April 3, 2008, to allow the Governing Board to consider adoption of Exhibit B. Superintendent Flores testified that the tiebreaking criteria listed in Exhibit B had been prepared before March 6, 2008. Exhibit B stated that the criteria for determining seniority for those employees with the same first date of paid service would be determined by awarding points on the basis of possession of credential(s) and/or subject matter authorizations; column placement on the salary schedule; service on school site committees, as a BTSA mentor teacher, or member of a Leadership Team or “District Curriculum Curriculum” [sic]; or possession of a BCLAD certificate.

Exhibit B also provided that if application of the criteria fails to resolve a tie the employee with the earliest date of issuance of a preliminary or professional clear credential is more senior, and among employees who remain tied who have never obtained a preliminary or professional clear credential; the employee with the earliest date of issuance of an intern credential is more senior. Among employees who have never obtained an intern, preliminary, or professional clear credential, the employee with the earliest date of issuance of an emergency or pre-intern credential or short-term staff permit is more senior.

On April 3, 2008, the Governing Board adopted Exhibit B, the tiebreaking criteria to be used in the implementation of the reduction of particular kinds of services.

11. District staff applied the tiebreaking criteria set forth in Exhibit B to Board Resolution No. 07/08-28 in implementing the reduction of particular kinds of services approved by the Governing Board. In addition to information on the Seniority List, they used information from a profile form circulated to certificated staff which requested data related to the Exhibit B criteria. Generally, the tiebreaking criteria was applied to employees with multiple subject credential assignments who share an August 16, 2007, first date of paid service, and to employees with social science credential assignments who share an August 16, 2007, first date of paid service.

At hearing the parties stipulated to changes in the District’s original determination of tiebreaking points for various counselors. Pursuant to the stipulation the following employees have the identified tiebreaking points: Jennifer Hokanson – 4 points, Zvart Alexan – 9 points, Julio Villalobos – 11 points, Francisca Martinez-Garcia – 11 points, Dianne Padilla – 11 points, Lilia Cisneros – 13 points, Julissa Mendoza – 10 points, and Marah Kuwada – 9 points.

Respondents Jessica Chessani and Alexandra Laks share a seniority date of August 16, 2007. Application of the criteria in Exhibit B to Board Resolution No. 07/08-28 did not resolve their tie, which the parties note would affect the order of reemployment. A coin toss at hearing was employed to resolve the tie, and pursuant to that respondent Chessani is senior to respondent Laks.

12. The reduction of particular kinds of services identified in Resolution No. 07/08-28 called for laying off certificated employees occupying a total of 43.94 FTE positions. A total of 16.3 FTE reductions without layoffs were achieved through attrition, reassignment, or elimination of extra-duty assignments. An additional 9 FTE reductions without layoffs were represented by transfers and release of temporary or substitute employees. Among others, the resignation of K-5 teacher Tami Morley was considered in determining the total number of layoffs and, although not effective until the end of the current semester, that resignation does not create a vacant FTE for the 2008-09 school year.

13. The District's counselors and academic coordinators hold Pupil Personnel Services credentials. Academic counselors are assigned to high schools and provide a range of academic counseling. The reduction of particular kinds of services of the counselors and academic coordinators would have the effect of reducing each incumbent's work year by five days. Superintendent Flores acknowledged that there was no agreement with the Gilroy Education Association to modify the work year, and although the District intended to bargain about the matter that did not take place.

14. Respondent Zvart Alexan holds a clear Pupil Personnel Services credential, and is currently assigned as a counselor at South Valley Middle School. Her seniority date per the Seniority List is August 21, 2006, and she is identified as a Probationary two employee. Respondent Alexan contends that she should be credited with the seniority date of August 17, 2006. She testified that her contract provides that she was retained to work earlier than August 21 and that, although she was absent from August 17 to August 21, she was paid for that period. She claimed that the period from August 17 to August 21 was "a paid excused absence" but then testified that she "made up those days later on" and "worked on days [she] was not scheduled to work" to make up for those days. She admitted that the first day she was present at the school site working was August 21, 2006.

In fact, respondent Alexan's contract does not state that her employment began August 17, 2006. Rather, it specifically stated in paragraph 4 that: "The term of employment is: 08/21/2006 to 06/15/2007." Her testimony that she was paid for the school days from August 17 through August 21 because it was "a paid excused absence" was not credible. Her salary, like that of other District certificated employees, is paid in ten or twelve increments through the year rather than in measures identified with specific days. Most importantly, if she had had a "paid excused absence" there would have been no requirement that she make up those days later on, as she testified. The District's payroll records, Exhibit 11, reflect no absences for respondent Alexan on August 17 to August 21, 2006.

15. Respondent Debra Hopf holds a provisional Multiple Subject Intern permit and is currently assigned to Solorsano Middle School. Her seniority date per the Seniority List is January 14, 2008, and she is identified as a Probationary zero employee. Respondent Hopf contends that she was hired in her "present job" on August 16, 2007, and is "still in the same position." She claims she should be assigned August 16, 2007, as her seniority date.

Respondent Hopf has worked for the District as a long-term substitute in several years, which were not identified on the record. She described those past jobs as lasting "anywhere from three to seven and a half months." The records of the California Commission on Teacher Credentialing establish that on September 17, 2007, respondent Hopf was issued an emergency 30-day substitute teaching permit which authorized her to serve as a substitute for not more than 30 days for any one teacher during a school year. She previously held emergency 30-day substitute teaching permits issued on July 1, 2006, March 2, 2005, February 6, 2004, January 21, 2003, and December 28, 2001.

Respondent Hopf acknowledged that she worked as a long-term substitute from August 2007 until January 2008, when she was offered a contract and the Governing Board authorized her intern credential. Before she obtained an intern credential in January 2008 respondent Hopf's only authorization to teach was a substitute permit. She testified that the District illegally employed her in the position of a long-term substitute. Her testimony regarding her employment in the 2006-07 school year was tentative and contradictory; she first stated that she taught the entire school year and then said she did not know if she taught that period as a long-term substitute. Superintendent Flores credibly testified that respondent Hopf did not work as a long-term substitute for that school year.

16. Respondent Marcy Ratliff holds a clear Pupil Personnel Services credential, and a clear Single Subject credential in English. She is currently assigned as a counselor for 50 percent of her FTE and as a teacher for 50 percent of her FTE at Gilroy Academy. Her seniority date per the Seniority List is August 23, 2004, and she is identified as a Permanent employee. Respondent Ratliff is in her second period of employment by the District. Previously she worked for the District from 1999, when she was a temporary employee, until she was laid off in 2002 when she was probationary. After that layoff she returned to school and obtained a masters degree.

In 2004 respondent Ratliff learned of a job opening at the District's community day school. She understood when she was hired in August 2004 that she was a probationary employee, and that it was not a rehire related to the 2002 layoff. Respondent Ratliff is seeking a 1999 seniority date on the theory that she was probationary after an initial temporary year during her first period of employment with the District.

17. Respondent Julio Villalobos holds a clear Pupil Personnel Services credential, and is currently assigned as a counselor at Gilroy High School. His seniority date per the Seniority List initially used by the District was August 17, 2006, and he is identified as a Probationary two employee. Respondent Villalobos testified that pursuant to his contract his

correct seniority date is August 7, 2006. The District stipulated that Mr. Villalobos' seniority date is August 7, 2006.

18. Respondent Francisca Martinez-Garcia holds a clear Pupil Personnel Services credential, and is currently assigned as a counselor at Solorsano School. The District stipulated that her seniority date is August 14, 2006.

19. Respondent Alexandra Laks holds a Multiple Subject Intern credential, and is currently assigned as a LA Core teacher at Eliot School. Her seniority date per the Seniority List is August 16, 2007, and she is identified as a probationary zero employee with 3 tiebreaker points. Respondent Laks contends that she should have more than 3 tiebreaker points because she will be taking a test in June to qualify for a BCLAD certificate, and because Teach For America, a non-profit placement agency, considers her a bilingual teacher.

The first placement respondent Laks obtained through Teach For America was a bilingual K-3 classroom. She presented a letter from Teach For America which stated that she had passed a rigorous Spanish proficiency test, and opined that because of that test and her placement she should "get full credit for being able to teach in a bilingual" setting. Respondent Laks acknowledges that she does not have a BCLAD certificate at present. Superintendent Flores correctly noted that the only credentials or authorizations a school district can consider are those issued by the State Commission on Teacher Credentialing, not a placement agency such as Teach For America.

20. Respondent Maria Rocio Cid-Castro holds a clear Pupil Personnel Services credential, and is currently assigned as a counselor at Mt. Madonna High School. Her seniority date per the Seniority List is January 31, 2007, and she is identified as a Probationary one employee. Respondent Cid-Castro claims that she is entitled to a tiebreaking criteria point for an additional authorization because she expects to complete a National University course for a Dropout Prevention Specialist certification in June. She acknowledged that she does not have the certification at present, and her testimony established that issuance of the certification is speculative. Superintendent Flores correctly noted that the only credentials or authorizations a school district can consider are those issued by the State Commission on Teacher Credentialing, and respondent Cid-Castro does not yet have Dropout Prevention Specialist certificate issued by that agency.

Respondent Cid-Castro wrote the District's application for an Alternative Education Outreach Consultant grant which funds part of her position. While she correctly notes that Board Resolution No. 07/08-28 does not specifically identify an eliminated counselor position by reference to either the grant or the term "dropout prevention," the District established that any of its counselors could fill the position. As respondent Cid-Castro's own Exhibit D established, the grant requires only that the counselor supported by grant funds enroll in a dropout prevention specialist course. Respondent Cid-Castro's testimony that the grant "requires that the person have the certificate" was not credible; she herself does not yet possess such a certificate. Moreover, the District has not applied for an Alternative

Education Outreach Consultant grant for the 2008-09 school year. If it chooses to do so, a decision within the Governing Board's discretion, any counselor may enroll in a Dropout Prevention Specialist course just as respondent Cid-Castro did.

21. Respondent Jennifer Legris holds a Multiple Subject preliminary credential, has a CLAD certification, and is currently assigned as a 6th grade Core teacher (language arts and social science) at Brownell School. Her seniority date per the Seniority List is August 23, 2007, and she is identified as a Probationary one employee. Respondent Legris testified that she received a "pink slip notice," and a "package that my services would no longer be necessary for next year and a sheet to fill out if [she] wanted representation." She denied that it was an Accusation packet, but acknowledged that she does not remember what it was titled.

On March 22, 2008, the District properly served respondent Legris with an Accusation, copies of related provisions of the Education Code, and a copy of Board Resolution No. 07/08-28. On March 27, 2008, she was properly served with a "DUPLICATE MAILING NOTICE" which included an Accusation, copies of related provisions of the Education Code, and a copy of Board Resolution No. 07/08-28 with Exhibit A and Exhibit B. The latter item was presented at hearing in an unopened state with the properly-addressed United States registered mail receipt attached. Respondent Legris testified that she did not receive any notice from her post office that there was an item to be picked up.

LEGAL CONCLUSIONS

1. Cause for the elimination of 43.94 FTE positions exists in accordance with Education Code sections 44949 and 44955. Except as to the withdrawn Accusations, cause further exists to give respondents notice that their services will not be required for the 2008-09 school year. This cause relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

2. No permanent or probationary employee with less seniority is being retained to render a service which any respondent is certificated and competent to provide.

3. Respondents contend that the planned layoffs are null and void because Exhibit A and Exhibit B were not attached to Resolution 07/08-28 when it was posted, distributed, adopted, and initially served on respondents.

Respondents claim that the Governing Board violated the Brown Act, and specifically Government Code section 54954.2, which requires posting of "an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting." Respondent's brief asserts that "no one reviewing the agenda . . . could possibly discern the action contemplated to reduce the particular kinds of service designated in that Resolution

07/08-28.” Respondents’ argument is not persuasive. The text of the resolution itself² precisely identifies the services and related positions to be reduced, the exact number of FTEs involved, and even the funding source of the positions. Moreover, the listing of the caption of the resolution conforms to the statutory requirement of a “brief general description” of that item of business.

Respondents further claim that the Governing Board violated the Brown Act, and specifically Government Code section 54957.5, subdivision (b), which requires that all writings “that are distributed during a public meeting shall be made available for public inspection at the meeting.” Respondent’s citation of that section is inapt because neither Exhibit A nor Exhibit B was “distributed” during the March 6, 2008, board meeting. It follows that since they were not distributed, there was no statutory requirement under that section that they be available for public inspection at the meeting.

Respondents failed to establish that the Governing Board violated the Brown Act in its adoption of Resolution 07/08-28. Moreover, such a violation would not invalidate the proposed layoff because it would not have deprived respondents of a hearing on the merits of the layoff. *Santa Clara Federation of Teachers v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.

4. Respondents claim that they were deprived of due process by the District’s failure to provide adequate notice, and that the deficiencies in notice were not cured by inclusion of Exhibit B to Resolution 07/08-28 in the March 27, 2008, “DUPLICATE MAILING NOTICE” Accusation packet. On March 12, 2008, respondents received the required notification of the Superintendent’s recommendation that their services would not be required for the 2008-09 school year.³ Those notices were sufficient information for respondents to be apprised of their prospects with the District, and to look for work elsewhere. The very receipt of the preliminary notice would indicate to a reasonable employee that his or her services were not going to be required the following year.

Respondents’ argument that they did not receive adequate notice of the layoff because the superintendent inadvertently failed to attach Exhibit B was not persuasive. Moreover, the Education Code requires only the identification of the particular kinds of services to be reduced or discontinued. It does not require that the preliminary notice include tiebreaking criteria. For that reason, respondents’ additional argument that the Board’s “retroactive adoption” of the tiebreaking criteria does not correct the failure of due process is similarly unpersuasive.

5. Respondent Legris contends that she was not properly served with an Accusation packet. Her testimony was vague and tentative, particularly in that she acknowledged receiving a package notifying her that her services would not be required for

² See Factual Finding 4, above.

³ See Factual Finding 6, above.

the upcoming school year. The preponderance of evidence established that she received the March 22, 2008, Accusation packet.

Education Code section 44944, subdivision (d), provides that "Any notice . . . shall be deemed sufficient when . . . when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee." The preponderance of evidence established that she was properly served with a "DUPLICATE MAILING NOTICE" which included an Accusation, copies of related provisions of the Education Code, and a copy of Board Resolution No. 07/08-28 with Exhibit A and Exhibit B. Service of the preliminary notice is sufficient if it is in the hands of the post office, correctly addressed, by March 15. *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627. For unknown reasons the duplicate Accusation packet was not received by respondent Legris, and was returned unclaimed to the District. It is patently clear she was not prejudiced because she appeared and testified at hearing.

Respondent Legris argues that if the District knows that the teacher did not receive the mailed documents because the signed registered mail receipt was not returned, the District "has an obligation to find out why and go assure service." The assertion is not persuasive and is not supported by any statute or case law.

6. As stated in Factual Finding 13, respondents sought to engage in bargaining with the District regarding the reduction of particular kinds of services adopted in Board Resolution 07/08-28. No bargaining occurred. The District is not required by Education Code section 44949 or 44955 to engage in negotiations or collective bargaining to reduce particular kinds of services.

7. Respondents contend they were denied due process because the District failed to timely respond to their request for the tiebreaking criteria. On March 25, 2008, respondents' attorney served a request for discovery on the District seeking, among other items, documents or worksheets prepared or used by the District in determining which individuals should be laid off due to which service reductions, which individuals should receive Notice of Layoff, and documents relating to the establishment of an order of employment and the application to employees of any criteria used to establish an order of employment. As noted in Factual Finding 8, respondents themselves were served with Exhibit B two days later, March 27, 2008.

On April 9, 2008, at 3:59 p.m., the District's attorney sent by facsimile Exhibit B and worksheets reflecting the application of the tiebreaking criteria to those respondents to whom the criteria would pertain. The subject hearing was scheduled to commence on April 14, 2008, at 9:30 a.m. Education Code section 44955, subdivision (b), states, in part, that upon request of the terminated employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with section 44949 a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. Respondents argue, without citation

to any authority, that the five days referred to in the statute in fact means exactly 120 hours. Respondents apparently fault the District's response to the discovery request as untimely by approximately 6½ hours. Respondents' contentions are not persuasive; if the Legislature had intended such exacting demands it would have framed the statutory requirements in hours rather than days.

8. The District is only required to consider credentials an employee has on file by the March 15 notice deadline. *Degener v. Governing Board of Wiseburn School District* (1977) 67 Cal.App.3d 689; *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 567-68. The District need not consider the expectations of respondent Laks and respondent Cid-Castro that they will receive additional certifications in the future.

9. Respondent Ratliff's argument that her seniority date should be 1999 and related to her first period of District employment, is not persuasive. She is not in the position of a teacher rehired at the start of the ensuing school year without a break in service; two years separated her periods of District employment.⁴ If there is a break in service, even of one day, then seniority starts after the break in service. Education Code section 44909 and *Kamin v. Governing Board* (1977) 72 Cal.App.3d 1014. Respondent Ratliff is correctly assigned the seniority date of August 23, 2004, the commencement of her current second period of employment by the District.

10. Respondent Hopf did not establish by a preponderance of evidence that she is entitled to a seniority date earlier than January 14, 2008. Neither *California Teachers Association v. Governing Board of Golden Valley Unified School District* (2002) 98 Cal.App.4 369 nor *Bakersfield Elementary Teachers Assn. v. Bakersfield City School Dist.* (2006) 145 Cal.App.4 1260 support an earlier seniority date or establish that the District illegally employed her in the position of a long-term substitute.

ORDER

Except as to respondents against whom Accusations were withdrawn, notice shall be given to employees occupying 43.94 full-time equivalent certificated positions that their services will not be required for the 2008-09 school year because of the reduction of particular kinds of services.

Dated: _____

M. AMANDA BEHE
Administrative Law Judge
Office of Administrative Hearings

⁴ See Factual Finding 16, above.