

BEFORE THE GOVERNING BOARD OF THE
KEPPEL UNION SCHOOL DISTRICT

In The Matter Of The Accusations Against:

OAH No. L2010031480

Matthew Brockway, Monetta Carter-Duckett, Randi Cooper, Challen David, Tara Goines, Erin Gregorio, Ventura Herrera, Charlighne Lee, Camille Lynn, Lisa Martinez, Dimas Molina, Deena Nostrant, Anna Paliza, Nicole Pieniaszek, Priscilla Salgado, Ana Sanabria, Rob Sinclair, Gwendolyn Streat, and Joyce Wallace,

Respondents.

PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 5, 2010, at the Keppel Union School District Offices in Pearblossom, California.

James B. Fernow of Fagen Friedman & Fulfroest, L.L.P., represented the Keppel Union School District (District). Richard Schwab of Trygstad, Schwab & Trygstad represented all Respondents.

Although there were additional Respondents listed in the Accusation, at the administrative hearing, the District rescinded the notices of termination of, and dismissed the Accusations against, the following Respondents: Kristan Adams, Timothy Alves, Ana Castellon, Audrey Hill, Cullen McNeill, Rosa Michaels and Maria Molina. The notices were rescinded due to retirements and resignations.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on April 5, 2010.

FACTUAL FINDINGS

1. Complainant, Steve Doyle, Superintendent, filed the Accusation while acting in his official capacity as the Superintendent of the District.

2. Respondents are certificated employees of the District.

3. On February 25, 2010, the Governing Board (Board) of the District adopted a resolution to reduce and discontinue the following particular kinds of services provided by the District no later than the beginning of the 2010-2011 school year:

<u>Services</u>	<u>Number of Full-Time Equivalent Positions</u>
Elementary School Teacher	18.0
Teacher on Special Assignment: BTSA	.5
Teacher on Special Assignment: Intervention Teacher	2.5
Total Full Time Equivalent [FTE] reduction	21.0 FTE

4. The Board further determined that the reduction in services necessitated a decrease in the number of certificated employees at the close of the 2009-2010 school year by a corresponding number of FTE positions, and directed the Superintendent to notify the appropriate employees to implement the Board's determination.

5. On or before March 15, 2010, the District gave notice to each Respondent of the potential elimination of his/her position for the 2010-2011 school year.¹ On March 24, 2010, the District served the Accusation on each Respondent who requested a hearing.

6. All Respondents served with the Accusation timely filed requests for hearing and Notices of Defense to determine if there was cause for not reemploying them for the 2010-2011 school year.

7. The services set forth in Factual Finding 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue the identified particular kinds of services was neither arbitrary nor capricious, and constituted a proper exercise of discretion.

8. The reduction or discontinuation of particular kinds of services was related solely to the needs and welfare of the District and its pupils.

9. The Board considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

¹ Caryn Banks, Priscilla Becerra, Felicity LaRue and Melanie Pumphrey were sent a Notice of Recommendation that Services Will be Terminated, but did not submit Requests for Hearing.

10. The District maintains a Seniority List which contains employees' seniority dates, current assignments, and credential and certificate information.

11. The District used the Seniority List with seniority dates to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District also considered each teacher's credentials and certifications. The District determined that nobody less senior than Respondents was being retained to render services which Respondents are certificated and competent to render.

12. In making this determination, the District skipped less senior employees whose particular kind of services were being reduced, because the District determined that the less senior, skipped employees were rendering services which the more senior Respondents were not certificated and competent to render. These skipped employees included: Dimas Molina, Tara Goines, Caryn Banks, Priscilla Becerra, Ana Sanabria, Gwendolyn Strean and Anna Paliza.

13. In making the determination to skip Respondent Molina and to disallow bumping by more senior employees, the District applied the legal competence standard adopted by the Board, as follows:

[F]or the purpose of assignment and reassignment to a position of Teacher on Special Assignment Instructional Coach (English Learner), those persons assigned or reassigned to a position of Teacher on Special Assignment Instructional Coach (English Learner) must have one year of full-time experience within the last ten years training teachers in the delivery of instruction utilizing specific strategies for English Language Learners.

(Exhibit 1 - Board Resolution 2009-10-2007.)

14. Respondent Molina (seniority date 7/26/07) is employed by the District as a TOSA - EL Learners. He acts as an instructional coach at several sites. He holds a professional clear multiple-subject credential, with a Bilingual, Cross-cultural, Language and Academic Development (BCLAD) certification – emphasis in Spanish. Respondent Molina has 12 years of classroom teaching experience and three years of experience as an instructional coach. Respondent Molina was “skipped,” but was still identified as subject to the reduction in force by way of a “precautionary notice . . . in case competency criteria is not upheld.”

15. There was no evidence that any Respondents senior to Respondent Molina possess the special qualifications and experience necessary to hold the position of TOSA Instructional Coach (EL).

16. In formulating the layoff list, the District decided to skip junior teachers with Gifted and Talented Education (GATE) certification and lay off more senior teachers without

GATE certification. These junior teachers were Caryn Banks and Tara Goines. Ms. Banks and Respondent Goines were “skipped,” but were still identified as subject to the reduction in force by way of a “precautionary notice.”

17(a). In making the determination to skip Ms. Banks and Respondent Goines, and to disallow “bumping” by more senior employees, the District determined that Ms. Banks and Respondent Goines possessed special qualifications necessary to hold the position of GATE instructors by way of their GATE certification. This determination was incorrect, since the District did not establish that the GATE certification was “necessary” to teach GATE students. The District did establish this certification was necessary to act as District GATE coordinator.

17(b). The District has 106 students who are eligible for the GATE program, and they have specific program needs and education strategies. GATE strategies can be obtained by way of training, in order to be more effective with GATE students. Both Ms. Banks and Respondent Goines have completed 120 hours of coursework offered by the University of California, San Diego, to obtain GATE certification. Additionally, Respondent Goines is serving as the District’s GATE coordinator and a GATE site coordinator and teaches a course entitled “Critical Thinking,” centered around GATE strategies. The District believes that the additional 120 hours of training “does make a difference” in meeting the needs of GATE students.

17(c). However, in his testimony, Assistant Superintendent for the District, Bart Hoffman, admitted that teaching in the GATE program does not require any special licensing or credential. Although the District prefers to have its instructors GATE certified, this certification is not necessary to teach GATE students, and the District acknowledges that “you take what you have.”

18. Respondents Rob Sinclair, Erin Gregorio and Charlighne Lee have greater seniority than Ms. Banks and Respondent Goines, but have not obtained GATE certification. However, they are credentialed to teach GATE students. Additionally, Respondents Sinclair and Gregorio have previously taught GATE students, and Respondent Sinclair was a site coordinator for the District’s GATE program. Based solely on the GATE certification, Ms. Banks and Respondent Goines should not be “skipped” in order to teach GATE students.

19. Nevertheless, Respondent Goines’ GATE certification is specialized training which is necessary for her to perform her duties as the District’s GATE coordinator, since such certification enables her to run the GATE program more effectively to meet the needs of the GATE students. Therefore, the District appropriately “skipped” Respondent Goines, and she may be retained.

20. In formulating the layoff list, the District decided to skip junior teachers with BCLAD certification and lay off more senior teachers without BCLAD authorization. These junior teachers were Priscilla Becerra (seniority date 7/26/07), Ana Sanabria (seniority date 7/26/07) and Gwendolyn Streaan (seniority date 7/30/08). Respondents Becerra, Sanabria and

Stream were “skipped,” but were still identified as subject to the reduction in force by way of a “precautionary notice.”

21(a). The District has a significant number of students whose primary language is not English and who need language assistance in order to learn the required subjects. Sixty seven percent of the District’s students are Hispanic and one third of its students are English Language Learners (EL). There is at least one EL in each classroom.

21(b). In its “Master Plan for English Learners” for the school year 2009/2010, the District has specified instructional delivery models which require that teachers possess a BCLAD or CLAD certificate, or “have been trained in accordance with SB 1969, SB 395, or are in the process of being trained.” Additionally, in its offers of employment, as well as its memoranda of understanding, the District specifies the requirement that teachers “obtain a CLAD certificate or equivalent and/or BCLAD certificate or equivalent within three years of employment” with the District.

21(c). A CLAD requires competency in three domains as follows: Domain 1: Language – Linguistics, first and second language acquisition; Domain 2: Teaching – Principles and methods of teaching English to English Language Learners; Domain 3: Culture – Cultural diversity and equity in education. A BCLAD requires competency in three additional domains of knowledge, as follows: Domain 4: Teaching – Principles of bilingual education and methods of teaching two languages; Domain 5: Culture – The culture of the specific population of emphasis; and Domain 6: Language – Professional comprehension, speaking reading and writing in language of emphasis.

21(d). Although the MOU and Master Plan for English Learners do not indicate a preference of BCLAD over CLAD, in his testimony, Assistant Superintendent Hoffman indicated that the District prefers and needs teachers who hold a BCLAD. Obtaining a BCLAD involves more in depth classes than obtaining a CLAD, and offers additional competency in all testing areas, including culture and language. This makes the BCLAD holders more adept at teaching students, with fluency in Spanish being an important factor. A CLAD holder is not necessarily fluent in Spanish, but BCLAD holders have been tested for fluency in comprehension, speaking, reading and writing in Spanish. The District’s parents have been vocal about the need to have Spanish speaking teachers in the classrooms. When students have limited English, BCLAD holders are able to provide support to both students and parents. There was no evidence that CLAD holders would be able to provide equal support to students and parents.

21(e). The District has demonstrated a specific need for its teachers to provide support to EL students, which includes a fluency in Spanish, in order to meet their needs.

21(f). The District has also demonstrated that BCLAD holders have special training and necessary to teach EL students, which other Respondents with more seniority do not possess.

22. Respondent Ventura Herrera (seniority date 7/30/08) is fluent in Spanish, but does not hold a CLAD or BCLAD. She believes that she should be retained because she “uses [her] Spanish abilities to communicate without the BCLAD,” and “because [she] grew up in the community, which helps her to relate to the students and know[s] what it like for them.” Respondent Herrera did not establish that she should be “skipped,” since she does not have the have special training (BCLAD) necessary.

23. Respondents Becerra, Sanabria and Strean are BCLAD holders and have special training to teach EL students that Respondents with more seniority do not possess. Therefore, the District appropriately “skipped” Respondents Becerra, Sanabria and Strean, and they may be retained.

24. In formulating the layoff list, the District decided to skip a junior teacher with a single subject credential in order to accommodate the reconfiguration of the District. The “skipped” junior teacher, Ana Paliza, was still identified as subject to the reduction in force by way of a “precautionary notice.”

25. The reconfiguration of the District involves restructuring all schools from a K-6 model to a K-7 model next year, and then a K-8 model thereafter. The plan calls for the closing of a middle school and reopening it as an Advancement Via Individual Determination (AVID) academy at Almondale. Since the District did not want to relocate the seventh graders advancing to eighth grade, they will stay at their current sites. The eighth graders will need to have teachers with the content knowledge to meet their needs. A teacher with a multiple subject credential cannot do so. Therefore, the District skipped to retain a teacher with a single subject credential to teach eighth grade at Almondale.

26. Respondent Paliza (seniority date 9/10/2009) holds a clear multiple subject credential with CLAD emphasis, and a clear single subject credential with English and with CLAD emphasis. Respondent Paliza has 11 years of experience teaching middle school students and as an EL Coach.

27. Respondent Paliza has special training and certification to teach single subject English to eighth graders that Respondents with more seniority do not possess. Therefore, the District appropriately “skipped” Respondent Paliza and she may be retained.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2(a). Education Code section 44955, subdivision (b), provides, in pertinent part:

[W]henEVER 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 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. (Emphasis added.)

2(b). Based on the need to reduce or terminate 21.0 FTE of particular kinds of services, the Board initially directed the Superintendent to send appropriate notices to all employees whose services were to be terminated. The District sent out 30 notices as a “precautionary measure,” resulting in the over-noticing of 9 FTEs/employees. Although seven notices were rescinded at the hearing, those rescissions were due to retirements or resignations, not over-noticing. Therefore the rescissions decreased the 21.0 FTE/employees to be reduced/terminated to 14 FTE/employees.

3. Cause exists to reduce the number of certificated employees in 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 sections 44955.

4. Education Code section 44955, subdivision (b), provides, in pertinent part:

[T]he services of no permanent employee may be terminated . . . 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.

[¶] . . . [¶]

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof.

5. Education Code section 44955, subdivision (d)(1), allows the District to deviate from terminating a certificated employee in order of seniority, if the District demonstrates that there is 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.

6. The District demonstrated that there was a specific need to retain Respondent Molina to as a TOSA Instructional Coach (EL Learners) and that Respondent Molina has the special training and certification necessary to hold this position, which no Respondent with more seniority possessed. Therefore, the District appropriately “skipped” Respondent Molina, and he may be retained.

7(a). The District demonstrated that there was a need to employ specific education strategies in order to meet the needs of its GATE students. However, the District did not demonstrate that Ms. Banks and Respondent Goines should be skipped to provide GATE instruction/teaching by reason of their GATE certification. The District failed to establish that GATE certification was “necessary” to teach GATE students. Skipping is allowed if no senior employee is certificated and competent to render the service. Respondents Rob Sinclair, Erin Gregorio and Charlignhe Lee have greater seniority than Ms. Banks and Respondent Goines, and have the credentials and experience necessary to teach GATE students.

7(b). However, Respondent Goines may be skipped in order to provide services as the District GATE coordinator, since her GATE certification constitutes special training and experience necessary to act as the District GATE coordinator.

8. The District demonstrated a need for its teachers to provide support to EL students, which includes a fluency in Spanish, in order to meet the students’ needs. The District also demonstrated that Respondents Becerra, Sanabria and Streaan are BCLAD holders and have special training to teach EL students that Respondents with more seniority do not possess. Therefore, the District appropriately “skipped” Respondents Becerra, Sanabria and Streaan, and they may be retained.

9. The District demonstrated that its eighth graders will require teachers with the content knowledge to meet their needs, and that this would require teachers with a single subject credential. The District also demonstrated that Respondent Paliza has special training and certification to teach single subject English to eighth graders that Respondents with more seniority do not possess. Therefore, the District appropriately “skipped” Respondent Paliza, and she may be retained.

10. The number of FTEs/employees to be reduced/terminated has decreased to 14. Caryn Banks, Felicity LaRue and Melanie Pumphrey were sent a Notice of Recommendation that Services Will be Terminated, but did not submit Requests for Hearing. However, the evidence did not establish that they were among the retirements/resignations, and therefore, are counted among the 14 FTEs/employees subject to reduction/termination. Consequently, except as set forth above, only the 14 most junior employees should be sent notice that their services will be reduced or terminated for the 2010-2011 school year because of the reduction or discontinuation of particular services. The most senior employees, Respondents Rob Sinclair, Erin Gregorio, and Charlignhe Lee should be retained

11. No certificated employee junior to any Respondent is being retained to perform any services which any Respondent is certificated and competent to render.

12. Cause exists within the meaning of Education Code section 44955 for terminating or reducing Respondents’ employment for the 2010-2011 school year, as set forth in Factual Findings 1 through 27 and Legal Conclusions 1 through 11.

ORDERS

1. The Accusations served on the following Respondents are dismissed: Respondents Ana Paliza, Gwendolyn Strean, Tara Goines, Ana Sanabria, Dimas Molina, Priscilla Becerra, Rob Sinclair, Erin Gregorio, and Charlignhe Lee.

2. The Accusations served on the following Respondents are sustained: Deena Nostrant, Randi Cooper, Ventura Herrera, Lisa Martinez, Challen David, Camille Lynn, Matthew Brockway, Monetta Carter, Joyce Wallace, Priscilla Salgado, and Nicole Pieniaszek. Notice may be given to Respondents that their services will be reduced or terminated for the 2010-2011 school year because of the reduction or discontinuation of particular services as indicated. Notice shall be given in inverse order of seniority.

Dated: April 12, 2010

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings