

BEFORE THE
BOARD OF TRUSTEES OF THE
PARLIER UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ALMA CARLIN and
ADA ANGELICA DIAZ

Respondents.

OAH No. 2008031029

PROPOSED DECISION

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Fresno, California, on April 15, 2008.

Robert Piacente, Attorney at Law, represented the Parlier Unified School District.

Ernest H. Tuttle III, Attorney at Law, represented respondent Alma Carlin.

Respondent, Ada Angelica Diaz, did not appear.

The matter was submitted on April 15, 2008.

FACTUAL FINDINGS

1. Rick Rodriquez, Superintendent of the Parlier Unified School District (District), made and filed the Accusation in his official capacity.
2. Alma Carlin and Ada Angelica Diaz are certificated District employees.
3. On two occasions prior to March 12, 2008, in accordance with Education Code sections 44949 and 44955, the Superintendent notified the Board Trustees of the District (the Board) in writing, that he was recommending that at the close of the 2007–2008 school year, particular kinds of services (PKS) be discontinued. On March 12, 2008, the Superintendent notified Ms. Diaz and Ms. Carlin, in writing, of his recommendation that they be notified that their services would not be required for the ensuing school year. The Superintendent stated

the reasons for the recommendation. The recommendations that Ms. Carlin and Ms. Diaz be terminated from employment were not related to their performance as teachers.

4. On March 12, 2008, notices of termination were delivered by first-class mail to Ms. Carlin and Ms. Diaz. The written notices of termination specifically stated that their services would not be required for the 2008-2009 school year. The notices set forth the reasons for the recommendation and included a copy of the Board Resolutions authorizing the reduction in services. The notices advised Ms. Carlin and Ms. Diaz of their right to a hearing, that they had to deliver a request for a hearing in writing to the Superintendent by March 24, 2008, which was more than seven days after the notice of termination was served, and that the failure to request a hearing would constitute the waiver of the right to a hearing.

5. Ms. Carlin and Ms. Diaz timely filed a written request for a hearing to determine if there was cause for not re-employing them for the ensuing year. An Accusation was timely served on them. Ms. Carlin filed a timely Notice of Defense. All jurisdictional requirements were met in respect to Ms. Carlin. Ms. Diaz did not file a Notice of Defense, nor did she appear at the hearing. Accordingly, this matter proceeded as a default against Ms. Diaz, pursuant to Government Code section 11520.

6. On February 25, 2008 and March 11, 2008, the Board took action, through Resolution Nos. 24/2007-08 and 26/2007-08 respectively, to discontinue or reduce certain PKS at the end of the 2007-2008 school year. The Board resolved to eliminate:

- 1) 12 full time equivalent (FTE) multiple subject teaching positions in grade 1 and 2
- 2) One FTE multiple subject teaching position (reading teacher- HPSG)
- 3) One FTE multiple subject teaching position (reading teacher -IASA Title I/ Economic Impact Aid-LEP).

7. The designated services are PKS that could be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue these PKS was not arbitrary or capricious, but constituted a proper exercise of discretion.

8. The reduction or discontinuation of PKS related to the welfare of the District and its pupils. The Board was faced with significant budget cuts in the 2008-2009 school year. The Board determined that budget cuts necessitated that services be reduced. Prior to determining that it was necessary to eliminate 13 FTE positions, the Board took into account the number of temporary teachers employed and determined to non-reelect those teachers and eliminate the positions they held.

9. Ms. Diaz has a seniority date of August 11, 2004. She was noticed for layoff because she occupies one of the 12 FTE multiple-subject teaching positions in grade 1 and 2. Ms. Diaz did not appear at hearing and did not otherwise present any challenge to the reduction in force or evidence that persons with less seniority than she are being retained to provide certificated services that she is certificated and competent to render.

Bumping

10. Ms. Carlin has a seniority date of August 11, 2004. She teaches in an elementary school bilingual program. She holds a multiple-subject teaching credential with an English Learners authorization. She maintains that certificated employees with less seniority than she are being retained to provide services she is certificated and competent to render. Ms. Carlin argues she should be able to "bump" into the position held by the following teachers.

◆ Connie Prieto has a seniority date of August 14, 2006. She has a multiple-subject credential with a BCLAD. She is being retained to teach in the junior high school, in a single subject, math. She has the math credits necessary for this appointment. Ms. Carlin may not bump into this position because she does not have authorization to teach single subject, math.

◆ Esther Gonzalez has a seniority date of August 15, 2007. She holds a multiple-subject credential with a CLAD certification. She is currently assigned to teach English language learner students. She is currently assigned, per a board resolution, to teach a single subject, science, because she has the science credits to teach this class. Ms. Carlin does not have the certification and competence to teach single subject science.

◆ Rayazharida Defendis has a seniority date of August 15, 2007. She holds a multiple-subject credential with a CLAD certification. She is currently assigned to teach a single subject, math, in the high school, because she is taking classes necessary for obtaining authorization for math. Ms. Carlin does not have the certification and competence to teach single subject math.

◆ Richard Florez has a seniority date of October 11, 2007. He holds a multiple-subject credential with a CLAD certification and an authorization in social sciences. He is currently assigned to teach a single subject, social science, in the high school. Ms. Carlin does not have the certification and competence to teach single subject social science in the high school.

◆ Sam Clegg has a seniority date of August 15, 2007. He holds a multiple-subject credential with an EL authorization. Ms. Carlin maintains that Mr. Clegg was not noticed for layoff. However, the seniority chart entered in evidence indicates that Mr. Clegg resigned his position. Thus, Ms. Carlin may not "bump" Mr. Clegg out of a position.

◆ Sara Gonzales has a seniority date of August 15, 2007. She holds a multiple-subject credential with a Health Education authorization and is teaching health education and physical education in the high school pursuant to a Board resolution. Ms. Carlin does not have the certification and competence to teach single subject health and physical education in the high school.

Application of Tie-Breaking Criteria

11. The District had eight teachers with multiple subject credentials, who had a common seniority date of August 11, 2004. The District considered attrition and layoffs of junior teachers and determined that it would be necessary to lay off three teachers with the seniority date of August 11, 2004. The Board had previously adopted criteria to determine the order of termination among certificated employees with the same date of paid service (tie-breaking criteria). The Board adopted the following tie-breaking criteria:

- A. Credentials and experience to teach or serve in a particular program or provide a particular service of need by the District, e.g., special education, music, etc. (+1 per credential, +1 per year of experience)
- B. Credentials and experience to teach in special categorical programs, e.g., bilingual. (+1 per credential, +1 per year of experience)
- C. Years of experience previous to PUSD employment as a full time, credentialed teacher in a probationary/permanent K- 12 teaching situation in a public school. (+1 per year of experience)
- D. Credentials that permit supplementary authorizations. (+1 per supplementary authorization)
- E. Number of teaching and/or specialist service credentials. (+1 per credential)
- F. Earned degrees beyond the B.A. or B.S. level. (+1 per degree)
- G. Multiple language skills relevant to District need. (+1 for Spanish)
- H. Emergency permits (PIPs/STIPs) vs. Internship vs. Preliminary vs. Clear/Life Credentials. (+1 per emergency, +2 per internship, +3 per preliminary, + 4 clear/life credential).

12. After application of the tie-breaking criteria to the eight teachers, Ms. Carlin and Ms. Diaz were tied in the last position. Ms. Diaz prevailed in a lottery to break the tie. Nevertheless, as Ms. Diaz and Ms. Carlin achieved a ranking of seven and eight respectively, both received layoff notices.

Ms. Carlin takes issue with the number of points she was assigned. She maintains that she received no points for criteria G (multiple language skills...), even though she is fluent in Spanish and teaches in a bilingual program. District personnel explained that Ms. Carlin was not given a point for Spanish language skills because she did not hold a BCLAD. The District is in error. The criterion clearly relates to possession of a language skill, not a BCLAD, and Ms. Carlin should have been assigned an additional point. Nevertheless, this additional point would have brought her to 5 points, and she would be tied with Mary Roberts-Gomez. Ms. Roberts-Gomez was also laid off. The five teachers with scores above 5 were retained: Israel Almendarez, 8 points; Christina Solis, 10 points; Ivan Garibay, 10 points; Yolanda Torrez, 11 points; and Julissa Montalvo, 11 points.

Ms. Carlin maintains that she should have received additional points in tie-breaking criteria B, because she holds a BCLAD and would have received five additional points, therefore bringing her to 10 points. Israel Almandarez was in the fifth position, with 8

points, and he was retained. Had Ms. Carlin been assigned 1 point for Spanish proficiency and 5 points for BCLAD authorization, she would be in the fifth position and therefore not subject to layoff.

Ms. Carlin's math is correct. If she had been assigned an additional 5 points for holding a BCLAD under criteria B, she would have been retained, and Mr. Almanderez would have received a layoff notice. However, at the time the seniority list was created and at the time the tie-breaking criteria were applied, Ms. Carlin did not have verification of a BCLAD authorization on file at the District. While the seniority list was being constructed, on the 17th or 18th of March, District personnel notified Ms. Carlin that they had checked the Web site of the Commission on Teacher Credentialing and she did not have a BCLAD on file. Ms. Carlin contacted her instructional institution, Fresno Pacific University, and was advised that the paperwork had been misplaced. Ms. Carlin produced a letter to the District from Fresno Pacific University that stated that she was eligible for the BCLAD, but that she had not filled out the necessary paperwork. As of the date of this hearing, Ms. Carlin's BCLAD authorization was not on file at the district office.

It is the responsibility of the credential holder to ensure that her credentials are registered with the District or with the County Office of Education. Ms. Carlin worked for the District for four years following her schooling and apparently never checked her credentials with the District or with the California Commission on Teacher Credentialing. The District is not responsible for knowing about credentials that have been obtained but were not filed with the District or with the County Office of Education. (*Campbell Elementary Teacher's Association v. Abbott* (1978) 76 Cal. App. 3d 796, 814-815.)

"In making reductions in its certificated staff, a District need not take into account a credential that has been applied for but not received.... At the time a district must prepare its lay-off notices it must analyze carefully the number of people to be laid-off, the seniority listing of employees, and the credentials and qualifications of the individuals. If a district decides it must lay-off a certain number of employees, it must give those employees proper notice. Once March 15 passes by a district may not notify additional employees that they may be terminated. . . . A district does not have the right to add to the lay-off list... Respondent [Board] cannot be held accountable for the fact that Appellant received his credential *after* all notices were sent, a hearing held, and final Board adoption of the decision." (*Degener v Governing Board* (1977) 67 Cal. App. 3d 689, 698.)

The rationale for these decisions is apparent. The District must operate under strict statutory timeframes in order to effect a legal reduction in force. The District cannot delay taking action in order to accommodate employees whose credentials are not on file. And, in the interest of fairness to all employees, when a District applies tie-breaking criteria to determine seniority, it can only act on the verifiable information it has available at the time. The District may not disadvantage one employee on the uncertain basis that another

employee's credentials will be forthcoming.¹ At the time tie-breaking criteria were applied, Ms. Carlin did not hold a BCLAD authorization. When she testified in this proceeding on April 15, 2008, she acknowledged that she was currently "applying" for a BCLAD.

13. Finally, Ms. Carlin maintains that she should be assigned additional points under criteria B because she has taught in bilingual programs. She has taught for four years in a grade 4 dual immersion program where she teaches 50 percent in Spanish and 50 percent in English. The District maintains that criteria B provides points only if the employee meets both requirements of the criteria: experience in teaching a special categorical program (here bilingual) and holds the necessary credential (here a BCLAD). This is a reasonable interpretation of criteria B, and this is how the criteria were applied to each of the eight teachers with Ms. Carlin's seniority date.

LEGAL CONCLUSIONS

1. Ms. Carlin and Ms. Diaz have rendered valuable services to the District.
2. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. The notices sent to respondent indicated the statutory basis for the reduction of services and, therefore, was sufficiently detailed to provide due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of service to be reduced, both in the Board Resolution and in the notice, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)
3. The service identified in Board Resolution Nos. 24/2007-08 and 26/2007-08 are particular kinds of service that could be reduced or discontinued under section 44955. The Board's decision to discontinue the identified service was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause exists to reduce the number of certificated employees of the District due to the discontinuation of particular kinds of services. Cause for the discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.
4. A District may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

¹ Had the District credited Ms. Carlin with 5 points for teaching 4 years with a BCLAD, Mr. Almanderez would have received a lay off notice rather than Ms. Carlin. He would have ample ground to challenge his lay off, in that Ms. Carlin was improperly given 5 tie breaking points when there was no evidence that she held a BCLAD.

5. Education Code section 44955, provides in pertinent part:

¶...¶

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

¶...¶

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

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

7. As set forth in Factual Findings 1 through 9, and the Legal Conclusions, the District has established that no employee junior to Ms. Diaz is being retained to perform services which she is competent and certificated to render.


8. As set forth in Factual Findings 1 through 8, and 10 through 13, and the Legal Conclusions, the District has established that no employee junior to Ms. Carlin is being retained to perform services which she is competent and certificated to render.

RECOMMENDATION

Notice shall be given to Ada Angelica Diaz that her services will be eliminated in the 2008-2009 school year, because of the discontinuance of particular kinds of services.

Notice shall be given to Alma Carlin that her services will be eliminated in the 2008-2009 school year, because of the discontinuance of particular kinds of services.

Dated: April 29, 2008



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings