

**BEFORE THE BOARD OF EDUCATION
OF THE LOS NIETOS SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

OAH No. L2006030887

Teri Applebaum
Nicole Chavez
Charlyn Fijan
Rosa Mercado
Steven Risser
Christina Olea
Renee Trimble
Raelene Felix
Elsa Avina

Teachers of the Los Nietos School District

Respondents.

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on April 17, 2006, at 8324 S. Westman Avenue, Whittier, California.

Mark Thompson, Attorney at Law, represented Los Nietos School District (District)

Carlos Perez, Attorney at Law, represented all the teachers with the exception of Respondent Avina¹ who did not request a hearing.

The District served a Notice of Layoff² on each of the teacher Respondents. Either before or at the hearing, the District withdrew the Accusation, due to attrition, as to Respondents Trimble, Olea, and Felix.

The issue in this case is clear. Respondents' sole contention is that the District improperly "skipped over" Respondent Avina, the least senior of all Respondents.

¹ The District did not list (in Exhibit 11) Respondent Avina as an employee that it intended to lay off. Therefore, the Accusation as to Respondent Avina is deemed withdrawn by the District.

² Respondents Avina and Felix received Precautionary Layoff Notices.

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FACTUAL FINDINGS

1. Lillian Maldonado French, Superintendent of the District, acting in her official capacity, caused all pleadings, notices and other papers to be filed and served upon Respondents pursuant to the provisions of Education Code Sections 44949 and 44955. The parties, by and through their counsel, stipulated that all pre-hearing jurisdictional requirements have been met.

2. Respondents are employed by the Los Nietos School District as permanent, probationary, intern, pre-intern, emergency permitted, waiver, and/or temporary certificated employees of the District.

3. On March 8, 2006, pursuant to Education Code sections 44949 and 44955, the Board of Education of the Los Nietos School District was given written notice of the recommendation by the Superintendent that notice be given to Respondents that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

4. Before March 15, 2006, Respondents were given written notice of the recommendation that notice be given Respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

5. It was established that cause exists³, within the meaning of Education Code sections 44949 and 44955, for not reemploying Respondents for the ensuing school year. The District proposes the following:

The following particular kinds of services of the District will be reduced or eliminated no later than the beginning of the 2006-07 school year:

K-8 Classroom Teacher 6 F.T.E.

Special Education (Severely Handicapped) 1 F.T.E.

TOTAL CERTIFICATED POSTIONS 7 F.T.E.

6. The Board of Education decided that it is necessary to decrease the number of permanent certificated employees as a result of the reduction in services. These services are

³ Due to attrition, the District has reduced its layoff request to five K-8 teachers.

“particular kinds of services” that may be reduced or discontinued within the meaning of Education Code section 44955. The Board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but rather, constituted a proper exercise of discretion.

7. The reduction or discontinuation of these particular kinds of services is related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services is necessary to decrease the number of certificated employees of the District as determined by the Board.

8. The Board properly 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 as of March 15, 2006. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App. 3d 627 at 636). The District agreed it would withdraw layoff notices to the most senior teachers laid off as additional attrition occurs.

9. The District properly created its seniority list by determining the first date of paid service of each certificated employee and also properly utilized tie-breakers when necessary.

10. Here, the District retained, or “skipped”, certain employees with more seniority in order to retain a teacher (Respondent Avina) holding a Bilingual, Cross-cultural, Language and Academic Development Certificate, commonly referred to by its acronym BCLAD.

11. The District demonstrated a specific need to retain BCLAD teachers for the coming school year. The District services a 94 percent Latino population. Thirty percent of the District’s students are classified as “English learners.” English learner students are deemed not yet proficient in using the English language. While a teacher without a BCLAD certificate can teach these students, such a teacher would require a bilingual instructional assistant; whereas, a BCLAD teacher would not. The District considers it a priority to hire BCLAD teachers in order to facilitate working with the students and also in order facilitate direct communication with the students’ parents, rather than through an assistant who would act as an interpreter.

12. Education Code Section 44955, subdivision (d), states:

(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, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the

certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

- (2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

There is thus a two prong test under subdivision (d)(1) for skipping a junior employee: (1) a district must demonstrate a specific need for a specific course or course of study; and (2) the junior employee has the special training to teach the course which a more senior teacher does not. The District sustained its burden with respect to showing a specific need to retain BCLAD teachers.

13. The District established that it needs BCLAD teachers to fully carry out its mission. Elsa Avina has a BCLAD certification, along with a multiple subject credential, and is presently assigned to a bilingual Structured Immersion Program class. She possesses the necessary training and experience required under Education Code Section 44955, subdivision (d), to be properly skipped

CONCLUSIONS OF LAW

1. Jurisdiction for these proceedings exists pursuant to Education Code Sections 44949 and 44955.

2. Each of the services set forth in Findings 5 and 6 is a particular kind of service which may be reduced or discontinued in accordance with applicable statutes and case law.

3. The District's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion. At Respondents' request, the ALJ considered *Alexander v. Board of Trustees of the Delano Joint Unified School Dist.* (1983) 139 Cal. App. 3d 567. That case is not on point. The teachers who were skipped were not formally certified and some were not teaching bilingual classes. The skipped employee in this matter is BCLAD certified and works in a bilingual classroom.

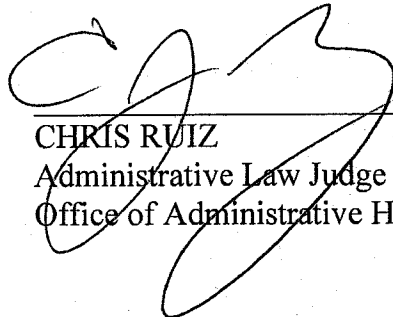
4. Cause exists to reduce the District's teaching positions by five Full Time Equivalents and to give notice to the affected teachers pursuant to Education Code Section 44955. (*Campbell v. Abbot* (1978) 76 Cal.App.3d 796; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689). Based on the above Findings, including the preamble to this Proposed Decision, the names of the affected teachers, those as to whom final notices of layoff may be given, are as follows:

Teri Applebaum
Nicole Chavez
Charlyn Fijan
Rosa Mercado
Steven Risser

ORDER

As a result of the reductions of services, the District may give notice to the teachers identified in Legal Conclusion No. 4 that their services will not be required for the 2006-2007 school year.

Dated: April 25, 2006



CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings