

BEFORE THE GOVERNING BOARD OF THE  
RIO SCHOOL DISTRICT

In The Matter Of The Accusations Against:

OAH No. L2008040385

William Almstrom; Amanda Bruski; Irene Carranza; Mireya Chavez; Sylvia Contreras; Jacqueline Coronado; Maria De Los Angeles Mauricio; Andres Duran; Lisette Garcia-Mora; Veronica Gonzalez; Angela Handley; Pablo Hernandez; Heather Knauer; Annette Magana; Hernan Martinez; Fred Messecar; Robert Mitchell; Cheryl Molina; Margaret O'Sullivan; Nancy Pearson; Mariela Plascencia; Erica Rodriguez; Roberto Rodriguez; Heriberto Rojas, Jr.; Cesar Rosales; Vanesa (Ruth) Salas; Andres Sanchez; Martha Sheppard; Jay Sorensen; Stephanie Terrazas; Kristin Theis; Erin Trujillo; Richard Valdiva; and Kristen Whitehead,

Respondents.

**PROPOSED DECISION**

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 22, 2008, at the Rio School District Offices in Oxnard, California.

Pamela Dempsey, Attorney at Law, represented the Rio School District. Paul D. Powers, Attorney at Law, represented all Respondents.

At the administrative hearing, the following Respondents were dismissed from the Accusation (and are therefore not included in the caption, above): Deborah Antrim; Elsa Hernandez; Danell Lagmarsino; Kimberlee Lopez; Susana Loughman; John Martinez; Lisa Martinez-Casta; Adelina Mendez; Erin Mooney; Carole Olsen-Bryan; Heather Parks; and Darin Spencer.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on April 22, 2008.

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## FACTUAL FINDINGS

1. Complainant, Sherianne Cotterell, filed the Accusation while acting in her official capacity as the Superintendent of the Rio School District (District).
2. Respondents are certificated employees of the District.
3. On March 8, 2005, 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 2008-2009 school year:

<u>Particular Kinds of Service or Program</u>	<u>Number of FTE<sup>1</sup> Positions</u>
Principal – Elementary K-5	1.00
Reading First (Coordinator)	1.00
K-3 Classroom Teaching Services	36.65
4-5 Classroom Teaching Services	4.15
6-8 Classroom Teaching Services	3.80
Social Science	1.00
English	1.00
Science	1.00
Physical Education	1.00
Electives (Life Skills)	2.00
Reading First (Coaches)	3.00
<b>Total FTE</b>	<b>55.60</b>

4. The Board further determined that the reduction in services necessitated a decrease in the number of certificated employees at the close of the present school year (2007-2008) 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, 2008, the District gave notice to each Respondent of the potential elimination of his/her position for the 2008-2009 school year. On April 15, 2008, the District served the Accusation on each Respondent.
6. Respondents timely filed Notices of Defense and requests for a hearing to determine if there was cause for not reemploying them for the 2008-2009 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.

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<sup>1</sup> Full Time Equivalent

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.

10. No certificated employee junior to any Respondent was retained to perform any services which any Respondent was certificated and competent to render. (See discussion in Factual Findings 13 through 17, below.)

11. The District maintains a Seniority List which contains employees' seniority dates (first date of paid service), current assignments and locations, tenure status, and credential and certificate information.

12. The District used the Seniority List to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District determined that nobody less senior than Respondents was being retained to render services Respondents are certificated and competent to render.

13. The District retained Aurora Zamudio (Zamudio), Number 186 on the seniority list, to continue teaching her current assignment, which is a first grade primary dual immersion program at Rio Real Elementary School. She holds a Professional Clear Multiple Subject Credential and a Bilingual, Cross-cultural, Language and Academic Development (BCLAD) Certificate. She also has extensive training through California Association of Bilingual Educators (CABE), and experience teaching in the District's dual immersion program. She was hired on August 23, 2006, and has a total of three years of teaching experience.

14. The District's dual immersion program is a two-language program, instituted in approximately 2004, with the goal that all students exiting the program master two languages, English and Spanish (i.e. Spanish speakers learn English and English speakers learn Spanish). Teaching the dual immersion program is a special skill. It requires a BCLAD Certificate, an English Language Learner (EL) Certificate, extensive training through CABE, and experience which can only be gained by having worked in a dual immersion program.

15. The District examined its records to determine if other employees had the qualifications and experience to fill Zamudio's assignment and determined that no more senior teacher was entitled to bump her, since no other teacher had the specialized training and experience needed for the dual immersion program position. While there are teachers more senior than Zamudio who have BCLAD and EL certificates, there was no evidence in their personnel files that they had the requisite training and experience to teach the District's dual immersion program. Therefore, although Zamudio is less senior than other similarly



credentialed teachers, she was skipped and retained to continue teaching the dual immersion class. However, she did receive a precautionary layoff notice.

16(a). Respondent Pablo Hernandez (Respondent Hernandez) currently teaches fourth grade at Rio Real Elementary School. He holds a Professional Clear Multiple Subject Credential and a BCLAD Certificate. He was hired on the same day as Zamudio. However, Hernandez is higher on seniority list with eight years of total teaching experience.

16(b) Respondent Hernandez argued that he is equally competent to teach Zamudio's dual immersion class and that he should bump her by reason of his seniority. This argument is not persuasive.

16(c). Respondent Hernandez testified that he is a member of CABE, and has attended CABE conferences for bilingual educators in 2004 and 2007. The conferences include workshops and networking for bilingual teachers. Respondent Hernandez further testified that, while he was employed by Voorhies Elementary School in Bakersfield, California, he taught a fifth and six grade dual immersion program for two years, in 2004 and 2005. This dual immersion teaching experience was not included on his application for employment with the District, nor was it listed on his extensive resume.

16(d). Respondent Hernandez explained that he did not include this specialized teaching on his application and resume because he was "not applying for a dual immersion job, but just a regular teaching job." He noted that, when he applied to the District, there was no dual immersion program, so he did not feel the need to include his dual immersion experience. This testimony was not convincing. His resume included detailed achievements and specials skills such as serving as teacher liaison between school and district, serving on a school tutoring program, serving as a fifth year pentathlon coach. None of these achievements and skills related to the "regular teaching job" for which he was applying, but they were included on the resume anyway. Respondent Hernandez provided no explanation for inclusion of these skills and achievements on his resume, but the omission of his CABE membership and two-year dual immersion program experience. The omission suggests that Respondent Hernandez's CABE membership and dual immersion experience were not significant enough to put on his resume. Additionally, there was no evidence that the dual immersion experience he acquired in Bakersfield rendered him currently competent to teach in this District's dual immersion program. Therefore, Respondent Hernandez's testimony did not establish that he has the special training and experience needed to provide teaching services in the District's dual immersion program.

17(a). Respondent Andres Sanchez (Respondent Sanchez) was hired on July 1, 2004. He has a Bilingual Cross Cultural Credential (an older version of the BCLAD), and has been an administrator for 10 years.

17(b). Respondent Sanchez contends that he is equally competent to teach Zamudio's dual immersion class and that he should bump her by reason of his seniority. This argument is not persuasive.

17(c). Respondent Sanchez testified credibly that he is a member of CABA and has attended CABA conventions in the past. He previously taught in a kindergarten dual language immersion classroom in the Los Angeles Unified School District for two years, some time between 1999 and 1994. He has not attended any dual immersion conventions in the last five years, nor has he read any books with guiding principles for dual language education. He has not taught for years, and is unfamiliar with current practices in EL education. There was no evidence that the dual immersion experience he acquired over a decade ago rendered him currently competent to teach in this District's dual immersion program. Therefore, Respondent Sanchez's testimony did not establish that he has the special training and experience needed to provide teaching services in the District's dual immersion program.

18. Just prior to the administrative hearing, while reviewing the seniority list to ensure that there were no junior teachers being retained while senior teachers were laid off, the District found that Respondent Kristin Theis (Respondent Theis), Seniority Number 139, would displace a math teacher, Jessica Serrano (Serrano), Seniority Number 201, who was skipped, but received a layoff notice. Although Respondent Theis's current assignment is sixth grade, she has a math credential, and would bump Serrano for a math assignment.

#### LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. (Factual Findings 1 through 6.)

2. The services listed in Factual Finding 5 are each determined to be particular kinds of services within the meaning of Education Code section 44955. (Factual Findings 3 and 7.)

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. (Factual Finding 8.)

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.

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. Zamudio was hired after Respondents Hernandez and Sanchez. The District demonstrated that there was a specific need for personnel to teach a dual immersion class, and that Zamudio had the special training and experience necessary to teach that course or course of study which others with more seniority did not possess. More specifically, Zamudio had special training and experience in teaching a current dual immersion program. Respondents Hernandez and Sanchez sought to "bump" Zamudio from her current position as a dual immersion teacher. However, the evidence failed to establish that Respondents Hernandez and Sanchez were competent to fill Zamudio's position. Therefore, Respondents Hernandez and Sanchez cannot "bump" Zamudio.

7. A senior teacher 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. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

8. Respondent Theis was hired by the District before Serrano. Respondent Theis is certificated and competent to render services as a math teacher that Serrano is providing. By virtue of seniority, Respondent Theis has the right to "bump" the junior employee and retain employment with the District.

9. No employee with less seniority is being retained to render a service which any more senior employee is certificated and competent to render.

10. Cause exists within the meaning of Education Code section 44955 for terminating or reducing Respondents' employment, except for Respondent Theis, for the 2008-2009 school year, as set forth in Factual Findings 1 through 18.

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## ORDERS

1. The Accusations served on Respondents William Almstrom; Amanda Bruski; Irene Carranza; Mireya Chavez; Sylvia Contreras; Jacqueline Coronado; Maria De Los Angeles Mauricio; Andres Duran; Lisette Garcia-Mora; Veronica Gonzalez; Angela Handley; Pablo Hernandez; Heather Knauer; Annette Magana; Hernan Martinez; Fred Messecar; Robert Mitchell; Cheryl Molina; Margaret O'Sullivan; Nancy Pearson; Mariela Plascencia; Erica Rodriguez; Roberto Rodriguez; Heriberto Rojas, Jr.; Cesar Rosales; Vanesa (Ruth) Salas; Andres Sanchez; Martha Sheppard; Jay Sorensen; Stephanie Terrazas; Erin Trujillo; Richard Valdiva; and Kristen Whitehead are sustained. Notice may be given to those Respondents before May 15, 2008, that their services will be reduced or terminated for the 2008-2009 school year because of the reduction or discontinuation of particular kinds of services as indicated.

2. The Accusation served on Respondent Kristin Theis is not sustained, and the Accusation related to Respondent Theis is dismissed.

3. The Accusations served on Respondents Deborah Antrim; Elsa Hernandez; Danell Lagmarsino; Kimberlee Lopez; Susana Loughman; John Martinez; Lisa Martinez-Casta; Adelina Mendez; Erin Mooney; Carole Olsen-Bryan; Heather Parks; and Darin Spencer are dismissed.

Dated: May 6, 2008

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JULIE CABOS-OWEN  
Administrative Law Judge  
Office of Administrative Hearings