

BEFORE THE GOVERNING BOARD  
ACTON-AGUA DULCE UNIFIED SCHOOL DISTRICT  
COUNTY OF LOS ANGELES  
STATE OF CALIFORNIA

In the Matter of the Accusation Against: )

JEANNE HUNEYCUTT, LOIS HUPP, )

Case No. L2004030537

SUZAN L. KENT, MARGARET )

MARRONE, JOAN MILLAR, )

VIRGINIA WEDDING, JEAN WRIGHT, )

and ROBERT FERGUSON, )

Respondents. )

**PROPOSED DECISION**

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 30, 2004, in Lancaster, California.

Peter Carton, Attorney at Law, represented Linda Wagner, Chief Administrative Officer, Acton-Agua Dulce Unified School District ("District").

Richard Schwab, Attorney at Law, represented Respondents.

The parties presented oral and documentary evidence, and evidence by oral stipulation on the record, and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. Chief Administrative Officer Wagner filed the Accusation in her official capacity.

2. Respondents are certificated employees of the District.

3. In March 2004, Wagner, as acting superintendent of the District, recommended to the Governing Board of the District ("Board") the reduction or discontinuation of particular kinds of services for the 2004-05 school year.

4. The Board adopted Resolution Number 03-04.11 on March 11, 2004, approving Wagner's recommendation.

5. On March 12 and 15, 2004, the District gave each Respondent written notice that their services will not be required for the 2004-05 school year due to the reduction or elimination of particular kinds of services.

6. Respondents filed timely requests for hearing to determine if there is cause for not reemploying them for the 2004-05 school year.

7. The District filed and served an Accusation on each Respondent.

8. Respondents filed timely Notices of Defense.

9. All prehearing jurisdictional requirements have been met.

10. In adopting Resolution Number 03-04.11, the Board took action to reduce the following services for the 2004-05 school year:

<u>Service</u>	<u>Full Time Equivalent Positions</u>
K-6 Instruction	5.0
Assistant Principal Position	1.0
Counselor Position	<u>1.0</u>
Total	7.0

11. The services set forth in factual finding number 10 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955<sup>1</sup>.

12. The District has suffered declining enrollment and the resulting decline in State revenue over the past four years. In order to meet its obligations to the District and its pupils in light of the declining revenue, the Board directed the net closure of five elementary classrooms and the elimination of two positions at the middle and high school. The Board's decision to reduce or discontinue the services is neither arbitrary nor capricious but is rather a proper exercise of its discretion.

13. The reduction of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees by 7 FTE positions as determined by the Board and its designees.

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<sup>1</sup> All further references are to the Education Code.

14. The District seeks to exempt from layoff, or "skip" in the seniority order, certain employees certificated to teach at the elementary school level because they possess special training, experience, or credentials. The following teachers hold Crosscultural, Language and Academic Development ("CLAD") certificates: Albus, Heidi (who has a seniority date of October 31, 2003); Van Ornum, Michelle (August 28, 2003); Rosenberg, Aline M (May 7, 2001); Bakoo, Christina (July 29, 2000); Gunnip, Stacy (May 4, 2000); Zankich, Stephanie (April 28, 1999). Albus is also certificated to teach special education. Van Ornum is also certificated to teach math.

15. Retention of teachers with CLAD certificates is important to the District as these certificates, or waivers from them ("SB395 waivers"), are needed to teach English language learners ("English learners") in accordance with State law. Wagner is concerned, based on communications from State officials, that the District may not be in compliance with mandates pertaining to the teaching of English learners.

16. In January 2004, the District sent all certificated employees a letter requesting verification of credential and seniority information by February 15, 2004. It did not inform them that CLAD certificates or their equivalent would have to be obtained by the deadline. It did not inform teachers that CLAD certification would be a criteria in the District's layoff determination.

17. Also in January 2004, the District started providing or facilitating training to its employees in order for them to acquire CLAD or SB395 certification. Respondents Huneycutt, Hupp, Kent, Marrone, Millar, Wedding, and Wright participated in this training and all had completed it and applied for certification by the time of the hearing.

18. The District has approximately 100 English learners, or about 7 percent of the student body. During the 2003-04 school year, the overwhelming majority of these students received instruction from CLAD-certificated teachers. This matching of need with credentials is likely to continue in the 2004-05 school year given the closure of one elementary school.

19. The District does not know the enrollment or composition of its 2004-05 student body. The District has not made class assignments for the 2004-05 school year and it is not known whether those it seeks to retain because of CLAD certification will in fact teach English learners.

20. Respondents Huneycutt, Hupp, Kent, Marrone, Millar, Wedding, and Wright are all permanent employees who hold multiple subject credentials that allow them to teach in elementary school and certain self-contained upper grades. They have the following seniority dates: Huneycutt (September 2, 1998); Hupp (August 25, 2000); Kent (August 27, 1998); Marrone (December 1, 1997); Millar (September 21, 2001); Wedding (September 2, 1999); and Wright (August 26, 1997).

21. Respondents Huneycutt, Hupp, Kent, Marrone, Wedding, and Wright are certificated and competent to render a service, elementary school instruction, that Rosenberg has been retained to render. In addition, Respondents Huneycutt, Kent, Marrone, Wedding, and Wright are certificated and competent to render a service, elementary school instruction, that Bakoo and Gunnip have been retained to render. In addition, Respondents Huneycutt, Kent, Marrone, and Wright are certificated and competent to render a service, elementary school instruction, that Zankich has been retained to render.

22. The District presently has two counselors, one at Vasquez High School and one at High Desert Middle School. It plans to have the remaining counselor provide all the counseling services to students at both locations. Respondent Ferguson is the junior of the two counselors, with a seniority date of August 20, 2001. He holds a clear school counselor credential, which authorizes him to provide counseling.

23. The District did not retain any junior employee to perform a service Respondents Ferguson and Millar are certificated and competent to render.

#### LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 9.

2. The services listed in factual finding number 10 are each determined to be a particular kind of service within the meaning of section 44955, by reason of factual finding numbers 10 and 11.

3. Cause exists to reduce the number of certificated employees of the District by 7 FTE positions due to the reduction of the services described in factual finding number 10, by reason of factual finding numbers 10, 11, and 12.

4. Cause for the reduction of the services set forth in factual finding number 10 relates to the welfare of the District's schools and pupils within the meaning of section 44949, by reason of actual finding numbers 11 through 13, and legal conclusion numbers 1 through 3

5. Section 44955 directs that certificated permanent and probationary employees are to be laid off by seniority, consistent with their qualifications and status. Thus, subsection (c) provides, in pertinent part, that "the governing board shall make assignments and reassignments in such manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render." The statute, in subsection (b), gives preference to permanent employees: "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." Districts are permitted to disregard seniority in two specific instances:

"(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 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."

As is evident from the plain language of the statute, in order for a district to skip a more junior employee it must show a "specific need for personnel to teach a specific course or course of study" and a that the junior employee has special training and experience to teach "that course of study" which others with more seniority do not possess. Thus, specificity is required in terms of the District's need and in the intent to fill the need with the junior employee.

In this case, the District did not establish that it had a specific need for personnel to teach a specific course. While a small percentage of the student population requires instruction from teachers who hold CLAD certificates or their equivalent, the district has several senior CLAD-certificated teachers and the English learner students' needs appeared to have been met during the 2003-04 school year. More importantly, however, the District has not been able to show that the retained junior teachers will be needed to teach specific classes with English learners; in fact it does not yet know the enrollment or the likely classroom need. Further, the District did not show that teacher assignments and reassignments will be insufficient to address the needs of English learner students. Its generalized desire to meet the needs of the English learner students is insufficient to meet the narrow exception in subsection (d) to the seniority mandate of section 44955. Accordingly, the District has not established that the teachers set forth in factual finding number 14 may properly be skipped by reason of CLAD certification.

6. Respondents Huneycutt, Hupp, Kent, Marrone, Wedding, and Wright are certificated and competent to render a service, elementary school instruction, that more junior employees were retained to render, by reason of factual finding numbers 14 through 21.

ORDER

1. The Accusation is sustained with respect to Respondents Millar and Ferguson and the District may notify them that their services will not be needed during the 2004-05 school year due to the reduction of particular kinds of services.

2. The Accusation is dismissed with respect to Respondents Huneycutt, Hupp, Kent, Marrone, Wedding, and Wright and the District may not terminate their services for the 2004-05 school year due to the reduction of particular kinds of services.

DATED: \_\_\_\_\_

SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings