

BEFORE THE  
GOVERNING BOARD OF THE  
GRIDLEY UNIFIED SCHOOL DISTRICT  
COUNTY OF BUTTE, STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SIMEON ALISON and SARAH  
MASINGALE,

OAH No. N2004030339

Respondents.

**PROPOSED DECISION**

This matter came on regularly for hearing before Jaime Rene Roman, Administrative Law Judge, Office of Administrative Hearings, in Gridley, California, on April 14, 2004.

Clark Redfield, Superintendent of the Gridley Unified School District ("the Superintendent"), of Butte County, State of California, was represented by Girard & Vinson, LLP, Attorneys at Law, by Michelle L. Cannon, Esq.

Respondents Simeon Alison and Sarah Masingale ("respondents") were represented by A. Eugene Huguenin, Jr., Esq.

Evidence and argument were received and the matter submitted on April 14, 2004.<sup>1</sup>

**FACTUAL FINDINGS**

1. The Gridley Unified School District ("District") provides elementary, middle and high schools.<sup>2</sup>
2. Clark Redfield is the District Superintendent.

<sup>1</sup> Prior to the receiving of evidence, the District moved, without objection, to dismiss an Accusation against a respondent Amber Melton. The motion was granted.

<sup>2</sup> Education Code §83: "A unified school district means a district maintaining grades kindergarten or 1 through 12. A unified district may comprise territory in more than one county."

3. Respondents are probationary certificated employees of the District who first rendered paid service to the District in such probationary position on August 21, 2002. Each respondent possesses a multiple subject<sup>3</sup> credential with CLAD.<sup>4</sup>

4. On February 11, 2004, the District Superintendent, following an Average Daily Attendance ("ADA") analysis of the District, gave written notice of his recommendation to the District Governing Board ("Board") that 3.0 full-time equivalent ("FTE") positions be reduced at the elementary (1.0 FTE) and middle school (2.0 FTE) levels for the ensuing school year; and categorical programmed particular kinds of services ("PKS") be further reduced by .82 FTE and stating the reasons therefore.

5. On February 18, 2004, the Board adopted Resolution BR-10-0304 establishing criteria for the order of termination among personnel who have the same date of hire. The criteria included consideration of: credentialing, experience, education, performance, certificates and service to the school.

6. On March 3, 2004, the Board, mindful of then-extant positively assured attrition and the Superintendent's recommendation that notice be provided respondents, pursuant to Education Code §§44949 and 44955, adopted Resolution #11-0304 reducing or discontinuing 3.82 full-time equivalent certificated positions of the District as a result of a decline in the District's ADA with a concomitant reduction in particular kinds of services, and directing the Superintendent or his designee to give notices to affected certificated employees that their services would not be needed for the ensuing school year, 2004 – 2005, and stating the reasons therefore.

7. On March 8, 2004, the District promulgated a seniority list. Nancy Klaker, District Personnel Director, was responsible in consultation with the District Superintendent and assigned District principals, for implementation of the technical aspects of the layoff, to include preparation and promulgation of the District seniority list. Affected employees were notified of the District's records and credentials, and encouraged to provide additional documentation.

8. The District employed the seniority list to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials or authorizations entitling such employee to "bump" another employee. To determine who would be identified for layoff each kind of service to be reduced, the District counted the number of reductions not covered by known vacancies, and determined the impact on incumbent staff in inverse order of seniority.

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<sup>3</sup> A "teacher authorized for multiple subject instruction may be assigned, with his consent, to teach in any self-contained classroom; preschool; kindergarten and grades 1 – 12, inclusive; or in classes organized primarily for adults." Education Code §44258.

<sup>4</sup> CLAD = Cross-Cultural Language and Academic Development.

9. On March 11, 2004, the Superintendent gave timely notice to respondents pursuant to Education Code §§44949 and 44955 that their services would not be required for the ensuing 2004 - 2005 school year, and stating the reasons therefore.

10. Each respondent timely requested, in writing, a hearing to determine if there was cause for not reemploying him or her for the 2004 – 2005 school year.

11. The Superintendent made and filed Accusations against each respondent. The Accusations, with required accompanying documents and blank Notices of Defense, were timely served on each respondent.

12. Respondents filed timely Notices of Defense.

13. While respondents submit that District ADA for the first grade is higher when compared between affected academic years; the overall ADA between K – 8 and high school demonstrates an overall marked ADA decrease in K – 8 vis-à-vis an overall marked ADA increase at the high school level; effectively belying the import of respondents' submission.<sup>5</sup> The services rendered by respondents in the Board's Resolution were the kinds of services that could be reduced or discontinued within the meaning of Education Code §44949. The Board's decision to reduce or discontinue these particular kinds of services was neither arbitrary nor capricious, but constituted a proper exercise of discretion. Further, the reduction or discontinuance of these kinds of services related to the overall welfare of the District and its pupils. Despite respondents further argument that extant attrition is not properly foreseen; within the limits of what is positively assured District attrition by announced resignation or earlier retirement, the District has acted both responsibly and properly. In sum, the reduction or discontinuation of the kinds of services rendered by respondents was necessary to decrease the number of District certificated employees as properly determined by the Board.

14. Respondent Simeon Alison, possessing a shared date of hire with other teachers, challenges the application of the Board's tie-breaker criteria in determining the District's order of seniority. Mindful of the curriculum developed for its secondary students; as it pertains to respondent, he clearly lacks the professional credential that would permit him to teach at a District high school. Left to teach in either District elementary or middle schools, respondent's seniority, when measured against his peers,<sup>6</sup> was determined as follows:

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<sup>5</sup> Respondents further contention that the District errs in pursuing the ADA layoff course vis-à-vis a PKS layoff course is readily misplaced. In *San Jose Teacher Assn. v. Allen* (1983) 144 Cal.App.3d 627, 638 – 639, the appellate court reposed discretion in a District to choose its course.

<sup>6</sup> Valadez, LaViolette, King and Masingale all share the same date of hire by the District.

Seniority No.	Add'l Credentials/Certificates	Experience	Add'l Education	Service <sup>7</sup>
48a (Valadez)	CLAD/Reading	8 yrs	75+	
48b (LaViolette)	CLAD/Math	2 yrs	45 MA in progress	coach/dance
48c (King)	CLAD/Bus	2 yrs	75+	
48d (Masingale)	CLAD	2 yrs	70 MA in progress	
48e (Alison)	CLAD <sup>8</sup>	2 yrs ++	48	coach

The evident difficulty posed by respondent's contention that he should be senior to Valadez lies in his failure to articulate any objective criteria other than his opinion. Regardless, in reviewing the criteria imposed by the Board and applied by the District, no abuse of discretion or evidence of capriciousness or arbitrary exercise is competently demonstrated by respondent.<sup>9</sup> Indeed, in a milieu where credentials and certificates broaden the value and capacity of a teacher's utilization by a District, it becomes apparent that as among Valadez (48a), LaViolette (48b) and King (48c), respondent's contention that would place him before Valadez in seniority is specious at best. Respondent is reduced to a contest between himself and Masingale—a respondent herein.<sup>10</sup> While, admittedly, both respondent and Masingale are respondents and both affected by the instant proceeding, it would appear, at first blush, that a determination of who is senior to whom would not be dispositive; however, inverse order of seniority may determine, in the event of further District attrition who does or does not become eligible for rehire. Accordingly, the issue of respondent's seniority vis-à-vis Ms. Masingale requires determination. To that end, respondent has proffered no evidence other than his CLAD's issuance. Balancing, however, Ms. Masingale's additional education toward a Master's degree against respondent's service as a coach, it cannot be said that the District abuses its discretion in giving more value to the pursuit of a master's degree (a non-compensated District activity) against one whose additional service lies in coaching—a District compensated activity. Accordingly, lacking competent credible evidence challenging the District's discretion, respondent Alison's claim as against his remaining peer, Ms. Masingale, fails.

15. No employee with less seniority than any respondent is being retained to render a service which any respondent is certificated and competent to render.

## LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists pursuant to Education Code §§44949 and 44955.

<sup>7</sup> Inasmuch as all respondent Alison's peers, including himself, were rated "equal" in "performance", the criteria has been disregarded in this finding.

<sup>8</sup> On March 8, 2004, respondent did not ostensibly receive credit for his CLAD. Having established its issuance, the undersigned has reflected it in the findings herein.

<sup>9</sup> *A.B.C. Federation of Teachers v. A.B.C. Unified Sch. Dist.* (1977) 75 Cal.App.3d 332; *El Dorado Union High School Dist. v. City of Placerville* (1983) 144 Cal.App.3d 123.

<sup>10</sup> Inasmuch as both respondent and Masingale are respondents and both affected by the instant proceeding, a determination of who is senior to whom will not be dispositive; accordingly, respondent Alison's remaining contention is dismissed as moot.

2. Cause exists because of reductions in particular kinds of services pursuant to Education Code §44955 to give notice to District certificated employees in 2.0 full-time equivalent certificated employee positions as set out in Findings 1 – 15. Such cause relates to the welfare of the schools and the pupils thereof within the meaning of Education Code §44949.

### ORDER

1. The Accusations are sustained as to respondents Simeon Alison, and Sarah Masingale.

2. Notice shall be given to respondents that each of their services will not be required for the 2004 – 2005 School Year because of the District's reduction and discontinuance of particular kinds of services.

3. Notices shall be given to respondents in inverse order of seniority.

Dated: \_\_\_\_\_

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JAIME RENÉ ROMÁN  
Administrative Law Judge  
Office of Administrative Hearings