

BEFORE THE  
BOARD OF EDUCATION  
OF THE  
PLACENTIA-YORBA LINDA UNIFIED SCHOOL DISTRICT

In the Matter of the Employment Status of:

OAH No. L2004020558

All Certificated Employees of the Placentia-Yorba Linda Unified School District Who Received Preliminary Layoff Notices for the 2004-2005 School Year,

Respondents.

**PROPOSED DECISION**

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Placentia, California, on April 19, 2003.

David C. Larsen, Attorney at Law, represented the Placentia-Yorba Linda Unified School District.

Paul Crost, Attorney at Law, represented the certificated teachers employed by the Placentia-Yorba Linda Unified School District who received preliminary layoff notices for the 2004-2005 school year.

The matter was submitted on April 27, 2003.

**FACTUAL FINDINGS**

*The Placentia-Yorba Linda Unified School District*

1. Notice is taken that the Placentia-Yorba Linda Unified School District (the District) covers about 45 square miles of suburban Northeast Orange County. The District serves the communities of Placentia and Yorba Linda as well as parts of Anaheim, Brea, Fullerton and unincorporated areas.

The District provides services at 20 elementary schools, five middle schools, several high schools and at other continuation and adult schools. The District serves the educational needs of over 27,000 students.

The District employs approximately 2,500 persons, many of whom are certificated employees. Certificated employees provide direct educational services and supports to the District's students.

2. The District is governed by a Board of Education (the Board).

Dennis M. Smith, Ed. D. (Dr. Smith), is the Superintendent of Schools and the Board's Chief Executive Officer. Don Trigg (Assistant Superintendent Trigg) is an Assistant Superintendent of Schools who serves as the District's Financial Officer. Timothy VanEck (Assistant Superintendent VanEck) is an Assistant Superintendent of Schools who serves as the District's Chief Personnel Officer.

### *The Economic Layoff*

3. Proposition 13 reduced a major source of assured revenue for funding public education. Following the passage of Proposition 13, public school districts have looked primarily to the State of California and to other governmental entities for necessary funding.

A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event usually occurring in late June. Before then, the school district's governing board must take steps to make certain that ends meet if the worst-case financial scenario develops.

A school board's obligation to balance its budget often requires that some teachers, administrators and/or other certificated employees be given preliminary layoff notices, notices warning that their services will not be required in the upcoming school year. Under Education Code section 44949, these preliminary layoff notices must be given no later than March 15.

The economic layoff statutes found in the Education Code generally require the retention of senior employees over more junior employees and the retention of permanent employees over probationary employees and others with less seniority.

A school district may deviate from the general rule requiring termination in reverse order of seniority if it can demonstrate that an identifiable junior employee possesses a credential, special training and/or experience necessary to teach a course of study or provide services that a more senior employee does not possess.

4. The Placentia-Yorba Linda Unified School District is required to regularly analyze its budget. Although the District does not have a pattern of deficit spending, a large operating deficit was projected for the 2003-2004 school year, substantially reducing its unrestricted general fund balance. While some carryover revenues might offset the District's \$4.3 million budget deficit, the Orange County Department of Education (which reviews the District's budget) recommended that deficit spending be reduced and that unrestricted reserves be maintained above recommended minimum reserves.

The District looked into ways to trim its budget, including the reduction or elimination of particular kinds of services.

5. The District's administrative staff prepared a recommendation that was given to the Board. The recommendation proposed the reduction and/or elimination of particular kinds of services. It was recommended that the District eliminate 70.4 full time equivalent (FTE) positions.<sup>1</sup>

*Board Resolution No. 26*

6. On March 9, 2004, Board Resolution No. 26 was adopted. That resolution provided:

"On motion of Member of Craig Olson, D.D.S., duly seconded and carried, the following Resolution was adopted.

**WHEREAS**, the District no longer has the financial ability or resources to provide all services which it is currently providing;

**WHEREAS**, in order to maintain a balanced budget and provide for essential services in the most acceptable manner, the District must eliminate programs and services in the 2004-2005 fiscal year;

**WHEREAS**, it will be necessary to reduce or discontinue the particular kinds of services now being rendered by certificated personnel for the 2004-2005 fiscal year as set forth in Exhibit A attached hereto and incorporated herein by this reference;

**WHEREAS**, the reduction or elimination of said services may result in reassignment, laying off of certificated employees; and

**WHEREAS**, it is necessary for the Superintendent to give notice to employees who may be laid off as a result of reduction in services prior to March 15, 2004.

**NOW, THEREFORE, BE IT RESOLVED** that the District reduce or eliminate the particular kinds of services or programs and reduce the corresponding number of full-time equivalent positions as set forth in attached Exhibit A and by this reference made a part hereof.

**BE IT FURTHER RESOLVED** that as between employees who first rendered paid service to the District on the same date, that employees be laid off solely on the basis of the needs of the District, which need shall be based upon the following in priority order:

1. BCLAD certification;
2. CLAD certification;

---

<sup>1</sup> A "FTE" is commonly used as the unit of measure to describe the services provided by one full-time credentialed employee over the course of one school year.

3. Credentialed status (clear versus preliminary), if elementary, and credentialed in multiple areas, if secondary;
4. Expertise or specialty emphasis in a particular curriculum or subject area of need to the District;
5. Staff development certificate/course work;
6. Currently providing instruction in intervention programs if elementary, and co-curricular assignments, if secondary;
7. Total experience as a public school teacher; and
8. Advanced degrees.

BE IT FURTHER RESOLVED that the Superintendent of the District be and hereby is authorized and directed to give notices to certificated employees of the district as is necessary to implement this resolution and as required by District Rules and Regulations and applicable provisions of the Education Code of the State of California.

ADOPTED, SIGNED AND APPROVED this 9th day of March, 2004.

BOARD OF EDUCATION OF THE  
PLACENTIA-YORBA LIND UNIFIED  
SCHOOL DISTRICT

By: Dennis M. Smith

...

AYES: Downey, Freeman, Miner, Olson, and Wagner

NOES: None

ABSENT: None

ABSTAIN: None

By: Karen M. Freeman  
Clerk . . . "

7. Exhibit A to Resolution No. 26 provided:

SERVICE OR PROGRAM TO BE ELIMINATED AND/OR REDUCED POSITIONS (Full Time Equivalent Programs/Course Offerings)

- |  |      |
|--|------|
| 1. Elementary P. E. Specialists  | 5.0  |
| 2. Elementary (K-6) Self contained teachers (3 <sup>rd</sup> grade C.S.R.) | 40.0 |
| 3. Elementary (K-6) Assistant Principal                                    | 2.0  |

4. Elementary – T.O.S.A.	.4
5. Middle School Math Teachers (7/8 Pre-Algebra C.S.R.)	5.0
6. Middle School Care Program – English	1.0
7. High School Math Teachers – (9 <sup>th</sup> grade Algebra C.S.R.)	8.0
8. High School English Teachers – (9 <sup>th</sup> grade Language Arts C.S.R.)	<u>9.0</u>
	70.4

### *Jurisdictional Matters*

8. On March 10, 2004, preliminary layoff notices were sent to about 70 certificated employees who determined by the District's administrative staff to be the most junior certificated employees performing a particular kind of services that were subject to reduction or elimination.

Each certificated employee served with a preliminary layoff notice timely filed a request for a hearing on or before March 22, 2004.

9. On April 19, 2004, the record in the administrative hearing was opened. Counsel for the District gave an opening statement. Counsel for Respondents waived the giving of an opening statement. Stipulations were recited. Sworn testimony and documentary evidence was received.

Counsel for the District gave an oral closing argument. Counsel for Respondents waived the giving of an oral closing argument, but was given through the close of business on April 23, 2004, to file a closing written argument. Counsel for the District was given through noon on April 27, 2004, to file a written argument in reply.

On April 27, 2004 the matter was submitted.

### *Stipulations*

10. The District experienced budgetary problems, as outlined in Factual Finding 4 (based on the stipulated testimony of Assistant Superintendent Trigg), which resulted in the recommendation to the Board that particular kinds of services being provided by the District be reduced or eliminated in the 2004-2005 school year.

Board Resolution No. 26 was duly enacted.

Each Respondent served with a preliminary layoff notice was duly employed by the District as a probationary or permanent certificated employee, proper notices were timely served and each Respondent requested a hearing.

### *Stipulated Dismissals*

11. The District requested that the Accusations filed against three certificated employees - Edward J. Furu (Furu), Sean P. Shelvin (Shelvin) and Sarah Christie (Christie) – be dismissed.

There was no objection to the motion to dismiss the Accusations against Furu, Shelvin and Christie.

The motions to dismiss the Accusation against these individuals were granted.

### *Skipping*

12. Education Code section 44955(d) sets forth an exception to the general rule that the services of a senior employee must be retained over the services of more junior employees. This exception involves “skipping” a junior employee and retaining the junior employee’s unique and necessary services over the services of a more senior employee who does not have special training and/or experience.

13. Education Code section 44955(d) provides:

“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.”

### *BCLAD Certifications*

14. The Bilingual, Crosscultural, Language and Academic Development (BCLAD) Certificate is issued by the California Commission on Teacher Credentialing. The BCLAD Certificate authorizes instruction to limited-English-proficient (LEP) students. Holders of a BCLAD Certificate may provide instruction for English Language Development (ELD), Specially Designed Academic Instruction Delivered in English (SDAIE) and Content Instruction Delivered in Primary Language.

The Commission on Teacher Credentialing administers rigorous BCLAD testing which identifies those teachers who possess the level of knowledge and skill required to

teach English learners effectively in a native language. The BCLAD examinations measure an individual's knowledge and skill in relation to established standards rather than in relation to the skills of other examinees. There is no guarantee that every person taking the BLAD examinations will pass and obtain certification.

15. Because of the relative shortage of teachers holding BCLAD certifications and the need for BCLAD certifications to teach certain classes, the District proposed to "skip" six junior teachers holding BCLAD Certification over more senior teachers who did not possess such certification.

16. Luciano Cid (Cid) had a seniority date of January 15, 2004. Cid held a Ryan Multiple Subject credential with a BCLAD Certification. Cid taught an Alternative (Bilingual) Third Grade Classroom at the Rio Vista Elementary School, in which there were 19 English Language Learners.

The District's decision to skip Cid was not arbitrary or capricious. The District demonstrated a specific need for Cid's services based upon his holding a BCLAD Certificate which several other more senior employees did not possess.

17. Jose Cabrera (Cabrera) had a seniority date of October 22, 2003. Cabrera held a Ryan Multiple Subject credential with a BCLAD Certification. Cabrera taught an Alternative (Bilingual) Third Grade Classroom at Topaz Elementary School, in which there were 17 English Language Learners.

The District's decision to skip Cabrera was not arbitrary or capricious. The District demonstrated a specific need for Cabrera's services based upon his holding a BCLAD Certificate which several other more senior employees did not possess.

18. Trinidad Figueroa (Figueroa) had a seniority date of August 25, 2003. Figueroa held a Ryan Multiple Subject credential with a BCLAD Certification. Figueroa taught a Structured English Immersion Fifth Grade Classroom at Rio Vista Elementary School, in which there were 29 English Language Learners.

The District's decision to skip Figueroa was not arbitrary or capricious. The District demonstrated a specific need for Figueroa's services based upon her holding a BCLAD Certificate which several other more senior employees did not possess.

19. Yeni Osuna-Pasillas (Osuna-Pasillas) had a seniority date of August 25, 2003. Osuna-Pasillas held a Ryan Multiple Subject credential with a BCLAD Certification. Osuna-Pasillas taught an Alternative (Bilingual) Second Grade Classroom at Tynes Elementary School, in which there were 19 English Language Learners.

The District's decision to skip Osuna-Pasillas was not arbitrary or capricious. The District demonstrated a specific need for Osuna-Pasillas' services based upon her holding a BCLAD Certificate which several other more senior employees did not possess.

20. Elvira Bermudez (Bermudez) had a seniority date of August 18, 2003. Bermudez held a Ryan Multiple Subject credential with a BCLAD Certification. Bermudez taught an Alternative (Bilingual) First Grade Classroom at Topaz Elementary School, in which there were 17 English Language Learners.

The District's decision to skip Bermudez was not arbitrary or capricious. The District demonstrated a specific need for Bermudez' services based upon her holding a BCLAD Certificate which several other more senior employees did not possess.

21. Julie Pak (Pak) had a seniority date of August 18, 2003. Pak held a Ryan Multiple Subject credential with a BCLAD Certification. Pak taught a Structured English Immersion Kindergarten Classroom at Topaz Elementary School, in which there were 26 English Language Learners.

The District's decision to skip Pak was not arbitrary or capricious. The District demonstrated a specific need for Pak's services based upon her holding a BCLAD Certificate which several other more senior employees did not possess.

#### *The Child Welfare/Attendance Officer Position*

22. Before the District determined that layoffs were required, it filled a newly established administrative position known as Coordinator Child Welfare/Attendance Officer (CWA). The position required applicants to hold a credential in Administrative Services and/or Pupil Personnel Services and a minimum of three years of successful experience in child welfare and attendance issues or related responsibilities.

23. The District hired Richard T. Miller (Miller) to fill the CWA position.

Miller holds a Ryan Designated Subject, Adult Credential. Before he was hired, Miller had served for many years as a law enforcement officer within the District, dealing with truants and delinquents. Miller was responsible for the District's DARE program. No employee senior to Miller has his special training and experience and none can fill his administrative position, which requires a unique set of skills.

The District's decision to skip Miller was not arbitrary or capricious. The District demonstrated a specific need for Miller's services based upon the nature of his credential and his specialized training and experience required to hold the CWA position. While other credentialed employees may have been senior to Miller, they did not have sufficient training or experience to hold the CWA position.

#### *Tenured Teachers*

24. At all times relevant to this matter, Education Code section 44955(b) provided in part:



“... 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.”

25. The District interpreted this portion of Education Code section 44955(b) to require the retention of three tenured (permanent) teachers whose seniority dates were more recent than those of some probationary employees. The District's interpretation was reasonable and was consistent with the appellate decision in *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627.

26. Barbara Barboza (Barboza), Jacqueline L. Howland (Howland) and Steven G. Zeitlow (Zeitlow) were all tenured (permanent) certificated employees with a seniority date of August 25, 2003. The District employed each tenured employee before his or her formal seniority date, each was reassigned and each returned to the District within 39 months, thereby acquiring tenure.

The District established that Barboza, Howland and Zeitlow acquired tenure and were permanent employees. The District properly retained the services of these tenured employees even though probationary employees with more advanced seniority dates would be subject to the reduction in force.

#### *Jannis Frederick*

27. The District hired Jannis Frederick (Frederick) in August 1990. Frederick became a tenured teacher in August 1992. She became an assistant principal in February 1998. Frederick's Ryan Multiple Subject credential expires August 1, 2005. Frederick is tenured, is properly credentialed and can provide teaching services that are currently being provided by certificated employees with less seniority.

For these reasons, the District properly determined Frederick was entitled to “bump” more junior employees and be retained to provide services as an elementary school teacher.

#### *The District's Seniority List*

28. According to Beth Berndt (Berndt), the District's Director of Personnel, the District created a 98 page Seniority List (Exhibit 10) that was based on the review of all certificated employees' credentials, assignments, tenured status and seniority dates. The Seniority List listed the most junior credentialed employee (Luciano Cid, seniority date January 16, 2004) first and the most senior employee (Carol J. Potts, seniority date March 4, 1963) last.

29. Exhibit 10 correctly identified the seniority dates of the employees except as follows:

- Harvey L. Armbrust had a seniority date of August 18, 2003, not August 25, 2003.
- Trinidad Figueroa had a seniority date of August 18, 2003, not August 25, 2003.
- Cynthia Meza had a seniority date of August 18, 2003, not August 25, 2003.
- Ana L. Lucero had a seniority date of August 18, 2003, not August 25, 2003.
- Yeni Osuna-Pasillas had a seniority date of August 18, 2003, not August 25, 2003.
- Eva Cecilia Ybarra had a seniority date of August 18, 2003, not August 25, 2003.
- Rebecca Diebolt had three years teaching experience, not one year of teaching experience, for purposes of evaluating her retention under the tie-breaking criteria.

The District's adjustment of the seniority dates referred to above does not necessarily require the retention of these persons, but the District's seniority list should be modified to include these corrections.

#### *The Temporary Employee/Probationary Status Issue*

30. The District classified some persons as "temporary" employees by reason of their written employment contracts.

According to Berndt, Harvey Armbrust, Trinidad Figueroa, Brian Shay, Teresa Vitelli, Eva Ybarra, Ana Lucero, Yeni Osuna-Pasillas and Robert Purnell were specifically serving the District under written "temporary" employment contracts, replacing teachers who were on leave.

31. Other persons were classified as "temporary" employees by the District because they held either an emergency permit, a university internship credential or because they were in their second year of employment but had previously failed to serve a complete year under a university intern credential.

Ana Lucero, Robert Purnell and Yeni Osuna-Pasillas served in the 2002-2003 school year on internship credentials and were reemployed on regular credentials at the beginning of the 2003-2004 school year. Neither had completed a full school year.

Eva Ybarra was on an internship credential with prior service under an emergency permit. Ybarra's service under the emergency permit did not count towards permanent or probationary status.

Through counsel, some of these employees argued that under *California Teachers Association v. Governing Board of the Golden Valley Unified School District* (2002) 98 Cal.App.4<sup>th</sup> 369, they were entitled to the status of probationary employees in this layoff proceeding.

*Aimee Firouznam*

32. Aimee Firouznam (Firouznam) began teaching Physical Education in August 1999 under an emergency permit. She received her credential in July 2003.

Firouznam served as a dance team coach and she reported to school for her coaching duties in early August 2003. She is clearly an enthusiastic and talented member of the Physical Education Department.

Firouznam argued, but did not establish, the inability of a senior Physical Education teacher to teach dance and coach the dance team. Firouznam did not establish her right to displace a more senior employee.

*Susan Sawyer*

33. Susan Sawyer (Sawyer) is credentialed to teach physical education and business education. Her specialty is business, particularly computer science. Sawyer is obviously a devoted and competent teacher.

Sawyer did not establish that she is senior to any other employee being retained by the District to provide services within the areas she is competent to teach.

*Robert Purnell*

34. Robert Purnell (Purnell) is credentialed to teach business education. Purnell competently teaches computer skills. He obtained special training required to run the District's Synergistic Technology Lab, training not possessed by any other employee. Purnell has a seniority date of August 18, 2003, making him one of the most junior teachers within the District.

Purnell is being displaced by a senior Mathematics teacher who has not had the special training required to oversee the Synergistic Technology Lab.

Notwithstanding his having taken a week long specialized training course, Purnell did not establish that he is senior to any other employee being retained by the District who is competent to provide services within the areas Purnell is competent to teach.

### Other Matters

35. The extent to which these particular kinds of services were reduced or eliminated was well within the Board's discretion. Each certificated employee providing a particular kind of service who was the subject of the layoff resolution was given a preliminary notice of the reduction of this particular kind of service in accordance with law.

36. No evidence established that any certificated employee was unable to determine his or her employment status and the likelihood that he or she would not be rehired for the 2004-2005 school year as a result of the Board's identification of the particular kinds of services that were reduced or eliminated.

37. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

38. No certificated employee junior to any more senior employee was retained to perform any service which a more senior employee was certificated and competent to perform. Positive attrition was considered in creating the seniority list.

### LEGAL CONCLUSIONS

1. *Jurisdiction*: Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied as to those certificated employees identified in the seniority lists.

2. *The Reduction/Elimination of Particular Kinds of Services*: A school district may consider its financial circumstances in deciding whether to reduce or discontinue a particular kind of service. *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 630.

3. A school board's decision to reduce or discontinue particular kinds of services need not be tied to any statistical computation. It is within a school board's discretion, subject to the minimum level required by law, to determine the extent to which a reduction of services is necessary and proper under the circumstances. A school board's decision is made at the time of the final notice. *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.

4. *Skipping*: Under the statutory scheme, junior teachers may be given retention priority over more senior teachers when the junior teachers possess superior skills or capabilities which their more senior counterparts lack. *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399, 405.

5. *Bumping*: Under the statutory scheme, a senior employee whose position is discontinued has the right to transfer to a continuing position he or she is certificated and competent to fill, and in so doing may displace or "bump" a junior employee. *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399, 405.

6. *Credentialing*: The following background information related to credentialing is taken from "Symposium: Access to Quality Teaching: An Analysis of Inequality in California's Public Schools," appearing in 43 Santa Clara Law Review 1045 (2003).

The primary tool California uses to ensure that teachers are prepared to teach is its teacher credentialing system. The California Commission on Teacher Credentialing (CCTC) is charged with ensuring that candidates recommended for a credential have demonstrated satisfactory ability to assist students to meet or exceed state content and performance standards. The CCTC has integrated preparation for teaching the required standards into both the subject matter and professional preparation requirements for a credential (primarily in the form of courses, tests, and supervised practice teaching) and the accreditation requirements that pertain to schools of education.

California issues two types of clear teaching credentials: Single subject (for teachers who teach a specific subject in a departmentalized class, usually in secondary school) and multiple subject (for teachers who teach all subjects in a self-contained classroom, most often used in elementary school). To earn either type of teaching credential, candidates must demonstrate their subject matter competence. This can be accomplished either by completing an approved subject matter preparation program in a California college or university or by passing one or more subject matter competency tests adopted by the CCTC.

In addition to demonstrating subject matter competence through specified coursework or testing, candidates for a single subject or multiple subject credential must complete an accredited program of professional preparation.

The courses and tests required of candidates are carefully mapped onto the CCTC's standards describing what teachers should know and be able to do, which are in turn directly related to the content standards expected of students.

Equally important are the state's expectations - reflected in its requirements for the teacher credential and for the accreditation of teacher education programs - for teaching content to diverse learners: knowledge of second language acquisition and development, knowledge of child development, and knowledge of the needs of exceptional learners and strategies for teaching to these special needs.

A sizeable minority of California's teachers - well over 40,000 in 2000-2001 - lacks a full credential for all or part of their teaching assignment, and many have not completed, or even begun, a teacher education program. Candidates who receive other credentials, permits or waivers satisfy some but not all of the requirements necessary to obtain a teaching credential.

To hold an intern credential, candidates must have satisfied most of the subject matter requirements, passed the CBEST and hold a bachelor's degree. They must also be enrolled in an approved internship program providing coursework and a supervised teaching experience. Generally, interns serve as the teacher of record for all or part of the school day. Some

programs provide some student teaching experience before candidates take on this role, others do not. Interns generally complete the professional preparation requirements over a two-year period while they are teaching.

Teachers on emergency permits or pre-intern certificates lack either the professional preparation and/or the content preparation expected of a fully prepared teacher or both. To hold an emergency permit or a pre-intern credential, candidates must have passed the CBEST, hold a bachelor's degree and meet a less rigorous subject matter standard. Emergency permit holders must submit a statement "demonstrating intent" to complete requirements for a credential. Emergency permits can be renewed for five consecutive years, during which the candidate is expected to complete a minimum of six semester units of coursework annually to renew the permit. Some teachers who are fully prepared and credentialed in another state teach on emergency permits while they are completing specific California requirements; some who are credentialed in another field hold emergency permits while they teach out of field.

Pre-interns are emergency permit teachers who have not yet satisfied the subject matter competence requirement for entry into an internship program and who have agreed to work toward subject matter competence while they are teaching as teachers of record. They also generally have not begun studying toward the professional preparation requirements. They must "demonstrate intent" to take the state's subject matter examinations for teachers and take content courses in a university while they hold the certificate. Pre-interns are not expected to have met the longer list of professional preparation requirements. If they enter an intern program, they then will be expected to pursue those requirements. Finally, the CCTC also grants short-term and variable term waivers that allow non-credentialed teacher candidates to waive any of the statutory and regulatory requirements for credentials. Waivers are generally issued to candidates who have not passed the CBEST or met the subject matter standards.

None of these adjunct categories of credentials, permits or waivers requires that the candidates fully meet the state's subject matter competence standards, which are tied to the student learning standards, before assuming teaching responsibilities. Furthermore, none of them requires that teachers have studied or demonstrated proficiency in standards-based methods of teaching subject matter, reading, English language learners, or special education students before they take responsibility for students, as full (preliminary or clear) credential holders are required to have done. None of the alternative credentials require that teachers have had the opportunity to work under the direct daily supervision of a practicing veteran teacher available to demonstrate effective strategies.

Thus, while it is possible that some individuals working in California on less-than-full credentials, permits, or waivers have the preparation and teaching skill needed to teach students to the state's learning standards, there are few guarantees that non-credentialed teachers have the depth of content knowledge and the breadth of teaching skills needed to assure access to equal educational opportunities for the diverse set of learners found in California classrooms.

7. *Temporary Employee Status*: Although contracts of employment may fix an employee's status as that of a temporary teacher, the employee is not estopped to claim probationary status if the Education Code compels that classification under the particular facts of the employment situation. *Santa Barbara Federation of Teachers v. Santa Barbara High School District* (1977) 76 Cal.App.3d 223, 227-228. The statutory mandate must be clear, however, before the terms of the contracts may be abrogated. *Ibid.*, at p. 240.

Education Code Section 44916 mandates that a school district comply with three requirements to hire a "new certificated employee" as a temporary employee: it must notify the employee of his or her salary and status as a temporary employee; do so in a written notice; and, give such notice at initial employment. *Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal. 4th 911, 918.

*Temporary Service*: Under Education Code section 44918, any employee classified as a substitute or temporary employee who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained and performed the duties normally required of a certificated employee of the school district is deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year.<sup>2</sup>

Under Education Code section 44920, any person employed for one complete school year as a temporary employee shall, if reemployed for the following school year in a vacant position requiring certification qualifications, be classified as a probationary employee and the previous year's employment constitutes one year's employment as a probationary employee for purposes of acquiring permanent status.

A complete year requires 75% service. See, Education Code sections 44908 and 44918.

8. *Service Under Emergency Credentials*: The appellate decision in *California Teachers Association v. Governing Board of the Golden Valley Unified School District* (2002) 98 Cal.App.4th 369, 383, stated "teachers serving under an emergency permit who satisfy the requirements of section 44915 are entitled to the statutory protections governing the dismissal of a probationary employee." *Golden Valley* was decided within the context of a mid-year "for cause" termination action (rather than an economic layoff action) and there was a written contract between the employee and the district which specifically provided the employee with contingent probationary status.<sup>3</sup>

---

<sup>2</sup> As pointed out in *Kalamaras v. Albany Unified School Dist.* (1991) 226 Cal.App.3d 1571, 1578, "The obvious purpose of the statute is to prevent school boards and administrators from abusing their discretion in hiring substitute [and temporary] teachers so as to circumvent the tenure rights of teachers" and Education Code section 44918 may have been enacted to "grant temporary teachers an extra modicum of protection."

<sup>3</sup> The decision in *Golden Valley* specifically recognized: "This case does not directly involve the first benefit of probationary status, i.e., counting service towards completion of the mandatory two-year probationary period. That situation was addressed recently by the First District in *Summerfield v. Windsor Unified School Dist.* (2002) 95 Cal.App.4th 1026 [116 Cal. Rptr. 2d 233] (*Summerfield*)."

9. *Summerfield v. Windsor Unified School Dist.* (2002) 95 Cal.App.4th 1026 controls this matter. *Summerfield* specifically held "Time spent teaching under an emergency teaching credential may not be counted in computing an employee's progress toward permanent status . . ." *Ibid.*, at p. 1028. The *Summerfield* court concluded this interpretation was "consistent with numerous provisions of the Education Code expressing the legislative preference for fully credentialed teachers and the goal of reducing the number of teachers employed under temporary or emergency credentials." *Ibid.*, at p. 1035.

10. There is no compelling legal basis to provide an emergency credential holder who has served the District under a valid, written temporary contract with a year of probationary credit for that emergency credentialed service.

This conclusion is based on the applicability of *Summerfield* and on Education Code section 4491, which specifically provides, "Service by a person under a provisional credential shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district." *Golden Valley* arose in a very different factual context and does not apply.

11. *Service as a University Intern*: All of the interns in this matter were university interns (as opposed to District interns). District interns (as opposed to university interns) have a specific statutory right to status as a probationary employee under Education Code section 44885.5. No similar statutory right exists for the benefit university interns. Indeed, Education Code section 44464 provides in part:

"An internship credential shall be valid only as long as the holder is in good standing in the teacher internship program of the district that makes the request, notwithstanding any provision of Section 44463, and the rights provided by Sections 44948<sup>4</sup> and 44949<sup>5</sup> shall not be afforded to interns."

In order for a university intern to obtain tenure, the intern must comply with Education Code section 44466, which provides:

"An intern shall not acquire tenure while serving on an internship credential. A person who, after completing a teaching internship program authorized pursuant to this article, is employed for at least one complete school year in a position requiring

---

<sup>4</sup> Education Code section 44948 requires cause to dismiss or suspend a probationary employee during a school year. The statute is limited to probationary employees whose probationary period commenced prior to the 1983-84 fiscal year or who are employed in a school district having an average daily attendance of less than 250 pupils.

<sup>5</sup> Education Code section 44949 sets forth the requirements related to the giving of preliminary layoff notices, the employee's right to request a hearing and the manner in which the administrative hearing shall be conducted. A person serving under an internship credential does *not* have the right to notice and a hearing under Education Code section 44644.



certification qualifications by the school district that employed the person as an intern during the immediately preceding school year and is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year, acquire tenure."

12. *Conclusions Regarding Probationary Status Under a Provisional Credential:* Within the context of an economic layoff proceeding, the retention of a teacher with a provisional credential over a teacher who possesses a valid teaching credential makes no sense. The economic layoff statutes were designed to ensure that qualified and competent senior employees be retained over more junior employees and that permanent employees be retained over probationary employees. A teacher cannot become a permanent (tenured) employee without first serving a probationary period, and a teacher cannot attain probationary status under a provisional credential.

13. *Ultimate Conclusions:* The District established it had a valid reason to reduce or discontinue particular kinds of services. The District properly identified these services. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law. The District established a valid seniority list, which was adjusted at the administrative hearing to meet the timely objections of individuals who were not offered the opportunity to attend a mandatory teaching academy on August 18, 2003. The District established that persons holding BCLAD credentials should be skipped over more senior employees not having such credentials and that Richard T. Miller should be retained because no senior employee had the special skills and experience required to hold the CWA position. The District correctly determined that Jannis Frederick had the right to displace a more junior employee and teach elementary school. The District correctly determined that employees holding temporary permits or a university intern credentials were not entitled to probationary seniority for purposes of this economic layoff proceeding. The District took into account positive attrition. Ties were properly broken under the first of the District's four tie breaking criteria, the use of which were not in issue.

The Accusations filed against Edward J. Furu, Sean P. Shelvin, Sarah Christie, Luciano Cid, Jose Cabrera, Yeni Osuna-Pasillas, Elvira Bermudez, Julie Pak, Richard T. Miller, Barbara Barboza, Jacqueline L. Howland, Steven G. Zeitlow and Jannis Frederick should be dismissed.

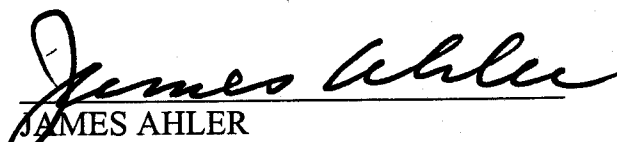
The following persons should be given final notice that their services will not be required by the District in the 2004-2005 school year: Jane C. Ahn, Paul Berman, Canny E. Christian, Joy E. Cole, Kathleen Cramer, Scott R. Davis, Rebecca E. Diebolt, Aimee L. Firouznam, Brenda C. Fisher, Brian Fortenbaugh, Genevieve Gish, Katie Gotovac, Dan Gullo, Julie Hammans, Calle R. Hendry, Suzanne M. Hofstetter, Amber D. Juarez, Nicole K. Killian, Robert C. Kim, Ana L. Lucero, Christa Marmolejo, Joy A. Okada, Daniel B. O'Leary, Dawn Page, Jason M. Parker, Wesley W. Peacock, Robert Purnell, Stephanie L. Rodriguez, Susan Sawyer, Brian Shay, Patricia Simmons, Andrea E. Spencer, Erik Starkey, Sharon Swingle, Tami T. Tang, Rosemary L. Taylor, Jennifer Terwiske, Teresa I. Vitelli, Laura C. Yeaman and Chris Zagarella.

## RECOMMENDATIONS

The Accusations filed against Edward J. Furu, Sean P. Shelvin, Sarah Christie, Luciano Cid, Jose Cabrera, Yeni Osuna-Pasillas, Elvira Bermudez, Julie Pak, Richard T. Miller, Barbara Barboza, Jacqueline L. Howland, Steven G. Zeitlow and Jannis Frederick should be dismissed.

The following persons should be given final notice that their services will not be required by the District in the 2004-2005 school year: Jane C. Ahn, Paul Berman, Canny E. Christian, Joy E. Cole, Kathleen Cramer, Scott R. Davis, Rebecca E. Diebolt, Aimee L. Firouznam, Brenda C. Fisher, Brian Fortenbaugh, Genevieve Gish, Katie Gotovac, Dan Gullo, Julie Hammans, Calle R. Hendry, Suzanne M. Hofstetter, Amber D. Juarez, Nicole K. Killian, Robert C. Kim, Ana L. Lucero, Christa Marmolejo, Joy A. Okada, Daniel B. O'Leary, Dawn Page, Jason M. Parker, Wesley W. Peacock, Robert Purnell, Stephanie L. Rodriguez, Susan Sawyer, Brian Shay, Patricia Simmons, Andrea E. Spencer, Erik Starkey, Sharon Swingle, Tami T. Tang, Rosemary L. Taylor, Jennifer Terwiske, Teresa I. Vitelli, Laura C. Yeaman and Chris Zagarella.

DATED: April 30, 2004.

  
JAMES AHLER  
Administrative Law Judge  
Office of Administrative Hearings