

BEFORE THE
GOVERNING BOARD OF THE
WASHINGTON UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations against:

OAH No. N2004030663

Thelma Olson, Ruth Anne Schroeder,
Judith Granada-Dewey, Cheryl Cain,
Barley Parrish, Scott Seffens, Alex Franco,
Suzanna Tapia, Willow Daykin, Deanna
Novoa, Patrick Cohen, Shannon Woods,
Shelley Alton, Kendra Moore, Gretchen
Dreeszen, Ardelia Koester, Tim Metros,
Amy Goldman, Ronald Galvan, Ann
Haines, Christy Aguer, Erin Cuarenta, Erik
Jones, Mathew Ainsworth, Jenny Riley,
Sarah Tutt, Linday Kuester, Donald
Stauffer, Jennifer Arnold, Heather Home,
David Baggs, Gweneth Branin, Jill
Crawford, Deanea Elfers, Diane Folks,
Susan Hocker, Alice Penrose, Eugene
Peters, Grace Robinson¹

Respondents

PROPOSED DECISION

Administrative Law Judge Karl S. Engeman, State of California, Office of Administrative Hearings, heard this matter in West Sacramento, California, on April 26 and 27, 2004.

Pamela A. Demsey, Attorney at Law, represented the Washington Unified School District.

Margaret A. Geddes, Attorney at Law, represented the respondents.

¹ There were other respondents upon whom accusations were served and who filed a notice of defense. The accusations against them were dismissed at the administrative hearing.

Evidence was received and the record was left open for the submission of simultaneous briefs. District's brief was marked exhibit 8 and made a part of the record. Respondents' brief was marked exhibit I and made a part of the record. The matter was submitted on May 4, 2004.

FACTUAL FINDINGS

1. Patrick Campbell made the accusations in his official capacity as the Superintendent of the Washington Unified School District (District).
2. On March 4, 2004, , the Board adopted Resolution No. 034-22 directing the Superintendent or his designated representative to give notices to certificated employees that their services would not be required for the 2004-05 school year.
3. Prior to March 15, 2004, respondents were served with written notice of the recommendation that notice be given them that their services would not be required for the ensuing school year and stating the reasons therefor.
4. Each respondent timely requested a hearing to determine if there is cause for not reemploying him/her for the ensuing school year.
5. The Board has resolved to reduce or discontinue the following services of the District no later than the beginning of the ensuing school year:

Elementary (9)	FTE
- Classroom Teaching	9

Middle School (7.5)	FTE
- At-Risk	1
- English	1
- English Second Language (ESL)	1
- Math	1
- Physical Education	1
- Science	1
- Social Studies	1
- Counseling	<u>.5</u>
	7.5

High School (16.5)	FTE
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- English	4
- English Second Language (ESL)	1
- Home Economics	1
- Math	4
- Physical Education	2
- Science	1
- Social Studies	1
- Spanish	1
- Auto/Metal shop	1
- Counseling Services	<u>.5</u>
	16.5

Yolo (5)	FTE
- Independent Study	1
- High School	1
- Home Hospital	1
- Opportunity	1
- Counseling Services	.5
- Psychologist	<u>.5</u>
	5

Administration (5)	FTE
- Vice Principal	1
- Coordinator, Student Services	1
- Dean of Discipline, Elementary	1
- Dean of Discipline, Secondary	1
- Program Specialist, Secondary	<u>1</u>
	5

Total: 43 FTE

6. On January 26, 2004, the District distributed to all probationary and permanent certificated employees a document describing their listed credentials, dates of hire and status. Based upon information received back from employees, the initial seniority list was updated and corrected.

RESPONDENT BARLEY PARRISH

7. Respondent Barley Parrish is a counselor at Yolo High School, the District's continuation/opportunity/independent study school. She holds a Master's Degree in

counseling and a Pupil Personnel Services credential authorizing her to do counseling work. Her first day of paid probationary service (seniority date) is August 16, 2000. Although she holds no special certificate reflecting special skills in working with students whose primary language is not English, such as a Cross-Cultural Language Acquisition Development (CLAD) or a Bilingual Cross-Cultural Language Acquisition Development (BCLAD), Parrish is fluent in both the reading and writing of Spanish. There are a high percentage of students at Yolo High School whose first language is Spanish. Parrish acts as an interpreter at Student Success Team meetings involving at risk students. She also acts as an interpreter when parents are called to tell them that their child is being sent home or when graduation requirements must be explained to them. She also interprets at Individual Education Program meetings for special education students and their parents or guardians.

8. In or about June of 2003, District produced a flyer advertising for a "Elementary School Counselor-Bilingual, Spanish Westfield Elementary School." The flyer was "posted" in accordance with standard procedures although the precise locations of the posting were not established. The listed qualifications included a Pupil Personnel Services Credential authorizing service as a counselor or participation in such a program with the expectation of the issuance of a credential within two years. The qualifications also included, "Knowledge and experience with 'at risk' youth." No CLAD or BCLAD certificate was required. The District hired respondent Ronald Galvan whose seniority date is May 23, 2003. Mr. Galvan holds a Master's Degree in counseling and a Ryan Pupil Personnel Services credential. He is bilingual including Spanish. District wishes to "skip" Galvan on the asserted ground that he possesses unique skills which other more senior teachers do not possess i.e. fluency in Spanish and experience teaching at risk students. While administrative personnel at Yolo High School no doubt knew that Parrish speaks and reads Spanish, it was apparent that those involved in making decisions to reassign senior teachers affected by the service reductions were not aware of her fluency in Spanish. Parrish did not know about the posting for the bilingual counseling position at the time that Galvan was hired. Parrish is both certificated and competent to "bump" into the position held by junior counselor Galvan.

RESPONDENT LINDSAY KUESTER

9. Respondent Lindsay Kuester began her employment with the District at District's Golden State High School in the fall of 2002 as a long term substitute. She taught for more than 75% of the 2002-03 school year under an emergency credential. She obtained her Multi-subject Self Contained credential on July 17, 2003. Her first date of paid probationary service as a credentialed probationary teacher was August 5, 2003, her designated seniority date. She teaches social sciences in grades 7 and 8. Kuester contends that her seniority date should be October 8, 2002, the day on which she began her employment for the District using an emergency credential.

RESPONDENT CHERYL CAIN

10. Respondent Cheryl Cain is a counselor at River City High School. Her seniority date is August 10, 2000. She holds a Master's Degree in counseling and a Pupil Personnel Services credential authorizing her to act as a counselor. Chris Tyler was employed by the District in 1972 and her seniority date is August 30, 1972. She holds a Standard Secondary: Physical Education and Sociology credential and a Standard Pupil Services: School Counseling credential. She earned the latter credential on a date not specifically established by the evidence but sometime after respondent Cain obtained her Pupil Personnel Services credential. Respondent Cain contends that, at least for layoff purposes, Tyler, who was not noticed, should be given a seniority date which coincides with the beginning of her counseling assignment. If such a date was given Tyler, respondent Cain would be senior to her and able to bump into her position by virtue of her credential and competence.²

RESPONDENT RUTH ANNE SCHROEDER

11. Respondent Ruth Anne Schroeder's seniority date is August 27, 1992. She holds a Single Subject: Home Economics credential with a Supplementary Credential in Introductory Business, and a CLAD. She teaches .8 FTE high school home economics and .2 FTE ROP in conjunction with the Sacramento County of Education. Nancy Bruce, who was not noticed, has a seniority date of August 25, 1998. Bruce holds a Master's Degree and a Standard Secondary: Home Economics and Political Science credential. She teaches at the Yolo High School, including at least one class in home economics. Schroeder is credentialed and competent to "bump" into Bruce's assignment and she expressed her consent to teach in an alternative high school during her testimony at the administrative hearing. District had not previously inquired if she would consent to do so.

Respondents Amy Goldman, Susan Hocker and Alice Penrose

12. Respondent Patrick Cohen was hired by the District as a teacher. His seniority date is August 27, 2001. Cohen holds a Single Subject: English credential and a Master's Degree. After teaching one year, he became an administrator and this school year he is responsible for coordination of student services. District intends to reassign Cohen to the classroom in school year 2004-05 teaching high school English. Respondent Amy Goldman's seniority date is November 18, 2002. She teaches high school English under a Single Subject: English credential. Respondent Susan Hocker's seniority date is August 5, 2003. She teaches high school English under a Single Subject: English credential.

² Respondent Cain's contention becomes academic with the conclusion that Galvan may not be skipped and the resulting rescission of her notice. See footnote 4.

Respondent Alice Penrose's seniority date is August 11, 2003. She teaches high school English under a Single Subject: English credential as well.

RESPONDENTS GWYNETH BRANIN AND DAVID BAGGS

13. Respondent Gwyneth Branin teaches a third grade bilingual class. Her seniority date is August 11, 2003. She holds a Multi-Subject credential and a Single Subject: English credential. She also has a BCLAD: Spanish certificate. Respondent David Baggs' seniority date is August 8, 2003. He teaches the same kind of class utilizing a Multiple Subject/Supplementary: Spanish credential and a BCLAD: Spanish credential. The Board's resolution for elementary school PKS reductions simply identifies 9 FTE positions without reference to specific elementary classes. Neither party presented evidence relating to the ability of the District to provide bilingual elementary classes if the layoffs contemplated are implemented.

SENIORITY LIST ISSUES

14. At least five probationary and/or permanent District employees were omitted from the seniority list initially compiled by the District prior to the issuance of the preliminary notices to respondents. With additional information, the seniority list has been corrected and augmented. Where teachers were omitted who were junior to those who were initially targeted for notice, such notices were rescinded. Respondents established no prejudice which resulted from the District's correction of the initial incorrect and incomplete seniority list.

LEGAL CONCLUSIONS

1. All notice and other jurisdictional requirements set forth in Education Code sections 44944 and 44955 were met.³

2. No cause for issuance of a notice to respondents Barley Parrish (.50 FTE)⁴ Ruth Anne Schroeder, or Cheryl Cain was established by reason of section 44955(b) pursuant to Factual Findings 8, 9 and 12.

3. Respondent Cheryl Cain failed to establish that she is senior to Chris Tyler, another counselor in the District. Section 44845 reads:

³ All statutory references are to the Education Code unless otherwise indicated.

⁴ The net effect of the conclusion that the District may not skip Galvan who holds a 1.0 FTE position in counseling is the rescission of the .50 FTE notice to respondent Cheryl Cain and the reduction of the 1.00 FTE notice to respondent Barley Parrish to .50 FTE, thereby making up the 1.50 FTE total counseling PKS reductions.

Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position.

Section 44845 does not refer to the credentials held by a teacher or the kind of teaching or counseling services provided and there is obviously nothing in the statute which provides for a new or different seniority date upon the acquisition of additional credentials or a change in assignment from teaching to counseling. Section 44955, subdivision (b), only requires that no senior teacher be noticed when "any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render." Respondent Cain simply asserts that Tyler should have been given a new seniority date when she began counseling. No legal support is cited for this proposition and it runs counter to established case law. *San Jose Teachers Assn. v. Allen* (1983) 144 Cal. App.3d 627, 640; *Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648, 656.

4. Respondent Lindsay Kuester's seniority date of August 5, 2003, is correct. Section 44918(a) reads:

(a) 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 in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year.

Section 44911 reads, in pertinent part:

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.

Read together, sections 44911 and 44918(a) provide that only service by a teacher holding an actual credential (as opposed to an emergency or "provisional" credential) in a temporary or substitute position qualifies as probationary service when that teacher is hired the next year as a probationary employee. Therefore, respondent Kuester was not entitled to retroactive credit for the year in which she served as a long term substitute under an emergency credential.⁵

⁵ While respondents referred to *California Teachers Assn. v. Governing Bd. of Golden Valley Unified School Dist.* (2002) 98 Cal.App.4th 369 during the hearing, it was not cited in respondents' post hearing brief in support of an earlier seniority date for respondent Kuester. District did cite and discuss the case along with *Summerfield v. Windsor Unified School Dist.* (2002) 95 Cal. App.4th 1026. Neither party cited *Fine v. Los Angeles Unified School Dist.* (2004) 116 Cal. App.4th 1070. None of these cases dealt with the proper seniority date for a teacher employed with an emergency credential, in a layoff context. *Golden Valley*, which accorded an emergency credentialed teacher the due process rights of a probationary employee in a midyear dismissal, should be limited to that context. So limited,

5. Respondents Amy Goldman, Susan Hocker, and Alice Penrose failed to establish that they are senior to Patrick Cohen who is being reassigned from his administrative position to teach high school English in 2004-05. Their contention rests upon the assertion that Mr. Cohen's seniority date of August 27, 2001, is incorrect because he should not be credited with the time that he served as an administrator. Respondents Goldman, Hocker and Penrose cite section 44956.6 which reads:

For a certificated employee initially employed in an administrative position on or after July 1, 1983, who transfers to a teaching position, the period of employment in the administrative position shall not be included in determining seniority for purposes of Sections 44955 and 44956, except for school site administrators who shall earn up to a maximum of three years seniority while serving as site administrators.

As is apparent, this section does not apply to Cohen who was initially employed as a teacher, not in an administrative position. Respondents cite no authority for the proposition that a person initially hired as a teacher who later becomes an administrator is not entitled to seniority credit for service as an administrator.

6. District's resolution identifying 9 FTE reductions in elementary "Classroom Teaching" was sufficiently specific to authorize the issuance of a notice to respondents Gwyneth Branin and David Baggs. The reduction of elementary classroom teachers has been found to be a reduction of a particular kind of service. *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627; *California Teachers Association v. Board of Trustees of the Goleta Union School District* (1982) 132 Cal.App.3d 32; *Zalac v. Governing Board of Ferndale Unified School District* (2002) 98 Cal.App.4th 838. These decisions consistently recognize that, at the elementary school level, classroom teaching is a particular kind of service. Unlike middle school and high school, where a teacher instructs in a particular subject or subjects, elementary school classes are multi-subject. Respondents Branin and Baggs have also failed to establish that their layoff will result in the District's inability to provide state mandated bilingual classes to eligible students.

7. No respondent has established any prejudice by reason of the District's corrections of and additions to the seniority list, even after the preliminary notices were sent respondents. District acknowledged that employees who are junior to teachers served with a preliminary notice were omitted from the first seniority list. When they became aware of the oversight, those affected senior employees' notices were rescinded.

8. Although not strictly required (*Lewin v. Board of Trustees* (1976) 62 Cal. App.3d 977, at 980-983; *San Jose* at p. 635), the Superintendent (or his designee) did take

the case does not conflict with the holdings of *Summerfield* and *Fine* that emergency credentialed teachers do not attain probationary status until the District learns that the teacher has earned his or her credential.

into account resignations of which they were aware when PKS reductions were proposed to the Board, as well as projected additional resignations. Projected student enrollments were included as well. Respondents established no violation of section 44949 or 44955 in the manner by which the Board resolved to reduce PKS.

9. Except as previously indicated, no permanent or probationary certificated employee with less seniority is being retained to render a service that respondents, are certificated and competent to render.

10. Mandated services for the ensuing school year are not being reduced beyond the level required by law.

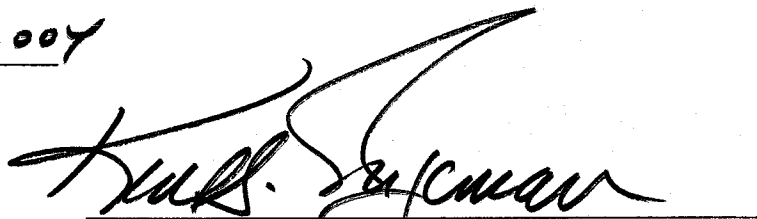
11. The reduction or discontinuance of services is related to the welfare of the schools and the pupils thereof.

12. Cause exists under sections 44949 and 44955 for providing notices to respondents, except respondents Cheryl Cain, Ruth Anne Schroeder, Barley Parrish (.50 FTE), Thelma Olson, Scott Seffens, Suzanna Tapia, and Ann Haines⁶, that their services will not be required for the ensuing school year.

ORDER

Notice may be given to the remaining respondents that their services will not be required in the ensuing school year.

DATED: May 7, 2007



KARL S. ENGEMAN
Administrative Law Judge
Office of Administrative Hearings

⁶ District conceded that there is no cause for issuance of a notice to respondents Thelma Olson, Scott Seffens, Suzanna Tapia and Ann Haines. Respondent Kendra Moore is to noticed for .40 FTE only.