

BEFORE THE  
BOARD OF EDUCATION  
CHINO VALLEY UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation for Layoff of  
Certificated Employees Against:

OAH No. L2004030274

CERTIFICATED EMPLOYEES OF THE  
CHINO VALLEY UNIFIED SCHOOL  
DISTRICT,

Respondents.

**PROPOSED DECISION**

On April 20, 2004, in Chino, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Sherry G. Gordon, Attorney at Law, represented the Chino Valley Unified School District.

Glenn Rothner, Attorney At Law, represented a majority of the respondents listed on the District's Final Layoff List, attached hereto as Exhibit A. None of the respondents who were not represented by counsel appeared at the hearing.

The matter was submitted on May 3, 2004.

**FACTUAL FINDINGS**

1. On March 12, 2004, Dr. Frank J. Infusino, Deputy Superintendent of the Chino Valley Unified School District (hereafter, "the District"), made and filed the accusations against respondents in his official capacity.

Prior to the hearing, the District dismissed the accusations against the following respondents: Alecia Balich, Michelle Ballein, John Beck, Joanne Beckman, Sherry Blits, Jamie Brown, Kevin Bryant, Christine Butorac, Sharon Connelly, Erin Dasher, Cynthia Dawson, Tonya Finely, Elizabeth Gallegos, Nathan Green, Sheri Hamblin, Alison Han, Charles Hemsley, Richard Holk, Janet Jones, Richard Kreuger, John Kunishimia, Sylvia Lagunas, Karen Lang, Emily Lao, Joe Ledesma, Lisa Lekkerkerk, Kerry Lewis, Heidi Lopez, Brandi Mack, Suzanne MacKay, Genevieve Manning, Stacy McCafferty, Virginia McMahon, Norma Mendoza, William Moser, Erin Mounce, Jennifer Orr, Laura Pees,

Michelle Penalber, Jennifer Reading, Carol Sommerville, Kelly Southard, Marquita Stallcup, Christopher Stevens, Roger Talley, Sarah Tibbets, Dana Toolson, Dawn Torres, Kristi Toth, Stephanie Tschetter, Cynthia Valenta, Jason Watts, Michael Weaver, Glenn Whetzel, Albert Williams, and Cynthia Williams. (See Exhibit 12.)

2. Respondents are certificated employees of the District.

3. Before March 15, 2004, pursuant to Education Code sections 44949 and 44955, the Superintendent notified the Board of Education of the District of the Superintendent's recommendation that respondents be notified their services will not be required for the ensuing school year. The Superintendent's notification to the Board of Education set forth the reasons for the recommendation.

4. On or before March 15, 2004, each respondent was given written notice that the Superintendent had recommended that notice be given to respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing year. Each written notice set forth the reasons for the recommendation. The notices satisfied the requirements of sections 44949 and 44955. *San Jose Teachers Association, Inc. v. Allen* (1983) 144 Cal.App.3d 627, 632; *Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 803-04, distinguishing *Karbach v. Board of Education* (1974) 39 Cal.App.3d 355, 360-63.

5. Each respondent timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year. Accusations were timely served on respondents, and each respondent filed a timely Notice of Defense. All pre-hearing jurisdictional requirements have been met.

6. The Board of Education of the District took action to reduce or discontinue the following services for the 2004-05 school year:

Junior High School English Teachers	6 full time equivalents
Junior High School Math Teachers	6 full time equivalents
Junior High School Science Teachers	6 full time equivalents
Junior High School Social Science Teachers	

	6 full time equivalents
Junior High School Physical Education Teachers	
	6 full time equivalents

High School English Teachers	10 full time equivalents
High School Math Teachers	10 full time equivalents
High School Biological Science Teachers	3 full time equivalents
High School Geoscience Teachers	3 full time equivalents
High School Physics Teachers	3 full time equivalents
High School Chemistry Teachers	3 full time equivalents
High School Social Science Teachers	10 full time equivalents
High School Physical Education Teachers	10 full time equivalents

High School Art Teachers	4 full time equivalents
High School Drama Teachers	2 full time equivalents
High School Family and Consumer Science Teachers	4 full time equivalents
High School Business and Computer Science Teachers	4 full time equivalents
High School French Teachers	3 full time equivalents
High School German Teachers	3 full time equivalents
High School Spanish Teachers	3 full time equivalents
Elementary Classroom Teachers	85 full time equivalents
High School Counselors	23 full time equivalents
Nurses	8 full time equivalents
Elementary Music Teachers	10 full time equivalents
Reading Specialists	12 full time equivalents

The proposed reductions provide for elimination of 243 full time equivalent positions. The services set forth above are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. *California Teachers Association v. Board of Trustees of the Goleta Union School District* (1982) 132 Cal.App.3d 32, 34-37 and cases cited therein. See also *San Jose Teachers Association v. Allen, supra* at 635-38, in which the court specifically rejected the reasoning of *Burgess v. Board of Education* (1974) 41 Cal.App.3d 571; *Zalac v. Governing Board* (2002) 98 Cal.App.4th 838, 853-54. Furthermore, these services may be reduced because of budgetary difficulties. *Zalac v. Governing Board, supra*, and cases cited therein. The decision to reduce or discontinue the services is neither arbitrary nor capricious but rather a proper exercise of the District's discretion.

7. No certificated employee junior to any respondent is retained to perform services which any respondent is certificated and competent to render except as set forth below.

8. The reduction or discontinuation 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 of the District as determined by the Board of Education.

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. The District created five Seniority Lists: tenured teachers, probationary 2 teachers, probationary 1 teachers, interns, and emergency pre-interns. These lists contain employees' hire date (first date of paid service with a credential), current assignments and locations, majors, credentials, and authorizations.

The District used the Seniority Lists 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 in another area and were entitled to "bump" other employees. In determining who would be laid off for each kind of service reduced the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other employees.

11. Shelley Bateman's first date of paid service to the District as a probationary employee is August 28, 2001. She is a tenured teacher. She has a Ryan single subject social science credential and a pupil personnel services credential. During the 2003-04 school year, she worked as a counselor at Chino Hills High School. Prior to that, she worked as an activities director, and was the first activities director of Chino Hills High School when it opened in 2000. She worked as an activities director and counselor during the 2002-03 school year, and as part of her duties, she taught two periods of leadership skills and help students run the student government. She resigned her position as activities director at the request of the school principal. The District proposed to lay her off for her position as a high school counselor.

Janet Roberts is a first year probationary teacher with a seniority date of August 26, 2003. She has a Ryan single subject credential in physical education and is authorized to teach art. During the 2003-04 school year, she was assigned to serve as the activities director at Chino Hills High School.

Michael Rossi is the District's associate superintendent for human resources. He worked in this position from 1993 to 2000, left the position, and returned in October 2003. He is responsible for hiring and termination of teachers, registering their credentials and establishing seniority dates, and so forth. He testified the position of activities director was a significant one with a great number of responsibilities, such as teaching leadership courses and working with student leaders.

The District decided not to reduce or eliminate the position and further decided to retain Roberts because she had performed the job and therefore had knowledge and experience in the position. He was unaware of any specific credential or training that the job required. He was also unaware that Bateman had any experience as an activities director.

12. Of the 58 elementary school teachers who received layoff notices, 24 taught under emergency, pre-intern, and intern credentials. Some of the teachers with university intern credentials, including Rhonda Martello, Michael Titus, Dyan Lindsay, and Mia Caceres, started teaching for the District before some probationary elementary school teachers who were not laid off. Other teachers in this position include Patricia Vasquez, Jeffrey Jensen, and Melanye Hallet. The intern teachers contend they should not be laid off if there are less senior probationary teachers who were retained.

Rossi testified the District drew a distinction between tenured and probationary teachers on the one hand, and interns, pre-interns, and emergency credentialed teachers on the other hand. For the latter group, the District did not consider the date of hire, i.e., the

date they began teaching for the District, as a seniority date for layoff purposes and they did not have the status of a probationary employee. He reasoned that a probationary teacher was rendering service toward achievement of permanent status while an intern was not, and that under the Education Code, intern service counted only after the teacher completed the internship, typically two years, and after one year of teaching as a probationary teacher.

13. George Karpontinis is a pre-intern and teaches math at Chino High School. He was originally hired on August 29, 2000 under an emergency permit, and became a pre-intern on September 1, 2002. The District proposes to lay him off from that position.

14. Elizabeth Aguilar is a first year probationary teacher with a seniority date of March 7, 2003. She has a Ryan multiple subject credential and a CLAD. She teaches kindergarten at Richard Gird Elementary School and the District proposes to lay her off. Aguilar testified at the hearing that she was hired under an emergency credential in September 1998 but was rejected as an intern in 2001. She remained with the District under the emergency credential and has worked for the District for six years. She wants to have all of her time as a teacher count and that she should be treated as a probationary employee.

15. Patricia Vasquez was hired on October 24, 2001 with a multiple subject intern credential and CLAD, and teaches English Language Development at Townsend Junior High School. She testified she is the only teacher at that school who speaks Spanish and believes she is a valuable asset to the school. She testified she expects to receive her credential next month when she completes one more class.

16. The District proposes to retain eight teachers who taught in the English Language Development Program: Daniel Robles, Patricia Rodriguez, Lisa Bader, Galo Rivadeneira, Kenneth Garrett, Laura Araujo-Salinas, Joe Ledesma, and Adriana Pascua. They all are presently assigned to the ELD program at the high school level, and all hold single subject and CLAD credentials. There are other teachers in the District who also have single subject and CLAD credentials who were not retained solely because they were not presently assigned to teach in the ELD program.

The Board resolution contains nothing with respect to the District's need to retain experienced ELD teachers. The District has no rules to determine what qualifications are necessary to teach in the program. According to Mr. Rossi, the District has a preference for teachers with a background in English as shown by a single subject in English, and a CLAD certification. However, of the ELD teachers listed above who were retained, not all have single subject English credentials, nor do all have CLAD certification.

Mr. Rossi testified it was a challenge for the District to staff the high school ELD classes with teachers with a background in English. But other than saying the District had a need for teachers to teach ELD, the District offered no evidence to establish there was need for such teachers. The District, however, did not lay off any ELD teachers.

## LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Education Code section 44955 provides in relevant part:

*(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.*

*(b) . . . [W]henver a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become necessary . . . to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. 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. . . As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.*

*(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year. The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. . .*

*(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 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.*

To put it more succinctly, 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. See *Lacy v. Richmond Unified School District* (1975) 13 Cal. 3d 469. Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. See *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; see also *Santa Clara Federation of Teachers, Local 2393 v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.

3. Respondent Shelley Bateman established she was senior to Janet Roberts, possessed the credential required to serve as the activities director at Chino Hills High School, and also possessed the same experience and skills that Janet Roberts had. The District therefore failed to establish under section 44955(d)(1) that it could lay off Bateman while retaining Roberts.

4. Section 44464 provides:

*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 and 44949 shall not be afforded to interns.*

Section 44466 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 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.*

In contrast to a university intern, a school district intern may be classified as a probationary employee. *Welch v. Oakland Unified School District* (2001) 91 Cal.App.4<sup>th</sup> 1421.

The relevant statutes make it clear a teacher working under an intern credential is to be treated differently from a permanent or probationary teacher for layoff purposes, and indeed, need not be accorded the rights to notice and a hearing provided by section 44949. By reason of section 44466, an intern may receive retroactive credit for his or her teaching as an intern only upon the satisfaction of certain conditions: completion of the internship, employment for one year by the same school district that employed the teacher as an intern, the employment must be in a position requiring certification qualifications, the internship must immediately precede the employment, and after completion of the one year of employment, the District reelects the teacher for the next succeeding school year to a position requiring certification qualifications. Until all those conditions are met, the intern's status cannot be equated with that of a permanent or probationary teacher employed under a clear or preliminary credential. Thus, the District properly determined an intern's date of hire did not constitute "the date upon which [the teacher] first rendered paid service in a probationary position." (Ed. Code § 44845.) It therefore follows the District could properly lay off any teacher working under an intern credential before any permanent or probationary teacher, regardless of when the intern began his or her employment with the District.

5. Respondent Elizabeth Aguilar and the District disagree as to when a teacher's first date of service in a probationary position occurs when the teacher is hired at a time when he or she holds an emergency or pre-intern credential, and subsequently obtains a clear or preliminary credential. The District argues the seniority date is the date the District is notified of the clear or the preliminary credential, while Aguilar argues the seniority date should be the date of hire. Respondent relies on *California Teachers Association et al. v. Governing Board of the Golden Valley Unified School District* (2002) 98 Cal.App.4<sup>th</sup> 369 (Golden Valley) and argues it requires employees with emergency and pre-intern credentials must be treated as probationary with full rights under sections 44949 and 44955. In *Golden Valley*, the court held a teacher working under an emergency permit was properly classified as a probationary employee and was entitled to the written notice of dismissal and the right to an administrative hearing pursuant to Education Code sections 44949 and 44955. After a lengthy discussion of the history of emergency credentials, the *Golden Valley* court observed: "[W]e construe section 44915 to allow a teacher serving under an emergency permit to be classified as a probationary employee." The Court stated those employees are entitled to the statutory protections governing the dismissal of a probationary employee. *Id.* at p. 383.

There are substantial differences between *Golden Valley* and this case. In *Golden Valley*, the issue arose following the teacher's termination by the District just before school was to start for the ensuing school year, and the basis for the decision not to reemploy her for the ensuing school year was her alleged failure to complete many of the basic requirements necessary to obtain a teaching credential. This case arises in the context of an economic layoff under sections 44949 and 44955 and it requires consideration not only of respondents' classification and seniority dates, but how their seniority dates compare to teachers with



preliminary and clear credentials. *Golden Valley* did not consider whether a teacher working on an emergency permit who has been classified as probationary should receive comparable seniority to a teacher who is working on a preliminary or clear credential. More importantly, the Golden Valley Unified School District had classified the teacher as a probationary employee pursuant to a written contract. In this case, there is no contract between respondents and the District classifying them as probationary. Under these circumstances, *Golden Valley* is not applicable to this case.

The case of *Summerfield v. Windsor Unified School District* (2002) 95 Cal.App.4<sup>th</sup> 1026 is closer to this case, but also differs from it. The court there held the two years the teacher spent teaching with an emergency permit could not be counted toward the time necessary for her to attain permanent status. Therefore, the Court held the teacher could be terminated by issuing a notice of non-reelection under section 44929.21 and her years of emergency permit service did not count toward tenure pursuant to section 44911. *Id.* at 1034. In a footnote, the court observed that although the District had originally classified Summerfield as a probationary employee though she was working under an emergency credential, that classification was improper. *Id.* at 1035, fn. 6. This case, like *Golden Valley*, did not arise in a context that required creating a seniority list for layoff purposes.

The purpose of sections 44949 and 44955 is to ensure credentialed and competent senior employees are retained over more junior employees and permanent employees are retained over probationary employees. A teacher cannot become a permanent employee without first serving a mandatory probationary period. *Fleice v. Chualar Union Elementary School Dist.* (1988) 206 Cal.App.3d 886, 893. Nor, according to *Summerfield*, can a teacher working under an emergency permit, lawfully attain the two years required for permanent status. There is no statutory authority that requires a school district to classify a teacher working under an emergency permit as a probationary employee, although, under *Golden Valley*, a school district may do so. Once a teacher becomes credentialed, there is no statutory authority enabling the teacher to retroactively add service performed while working under an emergency permit as there is, for example, with a temporary or substitute teacher who is employed the following year as a probationary employee. (Ed. Code §§ 44914, 44917, 44918; *see also* §§ 44909, 44466.) Based on the foregoing, it logically follows that a teacher working under an emergency permit cannot acquire seniority over a credentialed teacher simply because the emergency-credentialed teacher has worked for a school district longer than a credentialed teacher, unless the school district chooses to classify the emergency-credentialed as probationary for seniority purposes. Since the District did not classify respondent Aguilar as a probationary employee while she worked under an emergency credential, her date of first paid service as a probationary employee must be the date she received or recorded her preliminary or clear credential with the District.

The foregoing applies to respondent Karpontinis who has not yet received a preliminary or clear credential. Thus, for respondents Karpontinis and Aguilar, their date of hire is relevant only as it compares to other teachers in similar circumstances.

6. Respondents contend the District violated section 44955(b) by failing to rank all the teachers with the same date of hire using the Board's tie breaking criteria.

Respondents argue this is the only forum which would allow them to challenge the application of the criteria, and the District's failure to do that deprived them of an opportunity to correct any mistakes. It appears respondents were more concerned with the rehiring process than this layoff process because they recognize the District did apply the tie breaking criteria in the only situation where it was required.

The Board of Education enacted Resolution No. 2004-10 on February 19, 2004 which sets forth the tie breaking criteria required by section 44955(b). It creates a point system, with varying numbers of points assigned each of the ten criteria listed. Lower point totals indicate a low seniority date. If the point system resulted in ties, then the resolution provided for a lottery system.

Respondents and the District stipulated at the hearing that respondents had requested documents and materials related to the order of termination between teachers sharing the same starting date, the criteria to be used, and the application of the criteria. They also stipulated the District provided the criteria and an analysis showing the point totals and five separate situations. Of those five, however, only one was used to break a tie that resulted in the layoff of one of the four teachers who had the same seniority date.

Respondents focus on the part of section 44955(b) that requires the District, upon request, to provide in writing "... a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group." Respondents interpret this to mean that wherever any tie exists, the criteria must be applied.

The tie breaking criteria are designed to determine "the order of termination." The ranking of each employee "relative to other employees in the group" obviously refers to the employees to be terminated. If none of the teachers sharing the same seniority date are laid off, there is certainly no requirement to rank them. Similarly, if all the teachers with the same seniority date are laid off, ranking them accomplishes nothing. A ranking when all of the teachers share the same seniority date will be laid off is simply unnecessary and not required by the statute.

Section 44955 is concerned only with the termination of teachers, not the rehiring process. Whether respondents can or cannot challenge the District's later decision to rank them using the tie breaking criteria in a rehiring setting is irrelevant to the District's obligations in a layoff process, and does not create an obligation to determine the order of termination in a tie breaking setting when such an obligation is not contained in the statute.

7. Respondents object to the way the District identified the number of teachers it would lay off, and wants the District to make surgical reductions instead of using an axe. Respondents point out the District used a backward approach to arrive at its final decision.

According to Dr. Infusio, the District faced a projected budget deficit of \$16.5 million dollars and he notified the Board of Education of that in a March 4, 2000 memo. The Board chose to address the problem by reducing or eliminating particular kinds of services. Section

44955 allows the Board to do that. However, the statute contains no rules describing how a school district should go about the difficult task of deciding what services should be reduced and the extent of the reduction, and therefore deciding the number of employees to be terminated. There may be many ways for a governing board to approach that task. The method the Board of Education chose in this matter is a legitimate one. Whether it is the best one, or the one respondents would have wanted chosen, is not a matter within the scope of section 44955, and thus cannot serve as a basis for setting aside the layoffs.

8. The District chose not to lay off any teachers in the high school ELD program and in doing so, retained teachers who were junior to other, noticed teachers in the District who were qualified to teach ELD classes but who were not teaching in the program. In order for the District to do that, it must satisfy the requirements of *Alexander v. Board of Trustees of the Delano Joint Union High School District* (1983) 139 Cal.App.3d 567 and section 44955(d).

In *Alexander*, the Delano School District decided to reduce the number of its teachers and at the same time selectively retain teachers having Spanish speaking skills. Some teachers who were discharged were more senior to teachers with bilingual skills who were retained. The court held the district failed to use proper criteria in terminating the more senior teachers because it failed to follow the seniority system contained in section 44955. The court reasoned the phrase "the needs of the district and students" did not apply to determine layoff priority where teachers had different seniority dates, and therefore whether senior teachers were "certificated and competent" was the critical issue. *Alexander* was decided before section 44955(d) was added in 1983.

Section 44955(d) requires evidence that the retained junior teachers have special training and experience necessary to teach in the protected programs, and more senior teachers do not possess that special training and experience. Section 44955(b) also requires an examination of the qualifications of senior teachers to determine if they are certificated and competent to render the needed services. Section 44955 is silent as to what is required to meet these criteria. In the absence of legislation, the courts have repeatedly held school districts have the discretion to make them. In *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 865-67, the court, after reviewing the cases on the subject, held "a board's definition of competency is reasonable when it considers the skills and qualifications of the teacher threatened with layoff."

The District in this case made no showing to satisfy any of these requirements. Other than demonstrating there is an ELD program at the high school level and it was difficult to find teachers to teach, there was no solid testimony to show what the District was looking for in the teachers it chose to teach this subject.

The District's past practice of using teachers with either single subject English credentials and/or CLAD certifications is the best evidence of what the District considered to be competence to teach in the program. Accordingly, the eight most senior teachers who are qualified to teach ELD and who were noticed for layoff should be retained. Those teachers

are Lida Schneider, Mel Sims, Melissa Hamerla, Kenny Donovan, Mary Ragland, Gregory Crow, James Baty, and Christian Kleibacker.

Linda Tennies was also retained to teach in the ELD program. She is tenured with a seniority date of August 28, 2001. She has a multiple subject credential and a CLAD, and teaches at Magnolia Junior High School. Respondents have listed a number of teachers who they claim are more senior to her and certificated and competent to teach ELD. However, a review of the list discloses no teacher senior to her.

9. Respondents contend the District improperly skipped Norma Walters. She was hired as a long-term substitute and accordingly did not appear on the layoff list nor does she appear on the seniority list. As a long term substitute, she is subject to release at the end of the school year and there is no evidence that she was offered a contract for the 2004-05 school year. Thus, there is no reason to conclude she was skipped.

10. The District did not lay off Sarah Gaudio, a pre-intern hired on October 3, 2003 and teaching in an Applied Physical Science assignment. The Board resolution did not reduce Applied Physical Science. There are other teachers who are qualified to teach this subject who were noticed for layoff. The most senior is Terry Roche, and she should be retained.

11. Respondents contend Michael Warren, Michael Weaver, and Rita Gee are junior teachers who were skipped, and name a number of senior teachers who were eligible for the same assignment. Warren, Weaver, and Gee are listed on the District's bump analysis as having resigned, and the District used their positions as attrition in retaining other teachers. They were therefore not skipped.

12. Respondents contend Susan M. Oujano, a probationary 2 teacher with a seniority date of August 27, 2002, is a junior teacher who was skipped, and list three senior teachers who were eligible for the same assignment. However, Joseph Raya is an intern and he was hired on August 28, 2003, after Oujano. Claudette Dugbartey-Smith is a probationary 1 teacher but her seniority date is October 23, 2003. The only teacher senior to Oujano named by respondents as Terry Roche, but she will be retained pursuant to Legal Conclusion 10.

13. Respondents contend Brandi Lopez, Stephanie Schuppert, Shawna Johnson, Jill Goldbach, Renee Donohue, Suzanne Daniel, Jenna Au, Jennifer Reading, Silvia Lagunnas, Heidi Lopez, Cynthia Williams, Cynthia Valenta, Kristy Toth, Michael Titus, and Roger Talley are junior elementary school teachers who were skipped, and they list 21 senior teachers who were eligible for the same assignment. Titus, however, was not skipped; he is on the layoff list. Of the 21, two, Christy Martinez and Cynthia Graham were not noticed, served accusations, nor appeared as respondents in this proceeding.

A review of the teachers listed by respondents as "Senior Employees Eligible for Same Assignment" reveals six of them are interns who may be laid off before probationary teachers. (Legal Conclusion 4.) Of the remaining 13, none of them have a seniority date

earlier than the most junior teacher retained, Brandi Lopez. Most of the information respondents provided as to seniority dates was wrong. It appears respondents used the dates listed on Exhibit 8, but that is not the official seniority list. The seniority dates set forth on Exhibit 6 are the official dates. Using the dates from that list, the District established no elementary school teacher senior to the fifteen teachers listed above was retained.

14. Respondents name Jeffrey Schuld and Derrick Milgrim, both high school English teachers, as retained junior employees who are junior to several teachers who are eligible for the same assignment. One of them is Terry Roche, who will be retained. (Legal Conclusions 10 and 12.) Erica Miller has the same date of hire, but the District used its tie-breaking criteria to break a tie involving her, Schuld, Milgrim, and Browning. (Exhibit 7, p. 4.) Respondents offer no reason why the tie-breaking decision was erroneous.

Schuld and Milgrim have seniority dates of August 27, 2002. Both have single subject credentials with English majors and both teach high school English. Liza Miller has a seniority date of June 30, 2002 and has a single subject credential with majors in Intro. English and Social Science. She teaches high school World Civilization and US History. The District claims Miller holds a supplemental authorization in English and is not qualified to teach in the assignments held by Schuld and Milgrim.

The seniority list does not support the District's claim that Miller holds a supplemental authorization nor does it support respondents' claim that she hold a single subject English credential. The seniority list simply indicates she holds a "Ryan Single" credential, and lists her majors. There is nothing listed under "Supplementary Authorization" but under "Authorized Courses," a CLAD is listed. Schuld and Milgrim also hold "Ryan Single" credentials with majors in English.

No testimony was offered at the hearing as to what a Ryan single credential with a major in "Intro. English" authorizes a teacher to teach. A major in "Intro. English" suggests Miller took some type of course in English. Since the District proposes to lay her off and to retain Schuld and Milgrim, it should have to demonstrate Miller's single subject credential with a major in "Intro. English" means she is not certificated and competent to teach high school English. The District did not present such evidence. The accusation against her should therefore be dismissed and she should retain her position as an employee with the District.

Michael Maley has the same seniority date as Schuld and Milgrim and has a single subject English credential. He teaches junior high school English and is qualified to teach in the assignments of Schuld and Milgrim. The District did not break the tie. In its brief, the District alleges that applying the tie-breaking criteria would result in a determination that Maley is junior to Schuld and senior to Milgrim. The District properly concedes that under the circumstances, regardless of how the tie was broken, all three should be retained. Accordingly, the accusation against Maley should be dismissed.

15. Respondents contend that when it is determined the District improperly retained junior teachers by skipping more senior qualified teachers, the District must retain

all the teachers so skipped. The District argues the number of senior teachers who must be retained should correspond to the number of junior teachers improperly retained. The District's position is the more persuasive one.

Section 44949(c)(3) provides in part: "Nonsubstantive procedural errors committed by the school district or governing board of the district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors."

Where a school district decides to retain one junior teacher and lay off a more senior, and it is later determined the reasons for the district's action do not satisfy the requirements of section 44955(d), it is the most senior teacher who is prejudiced by the district's action. Even if there are other teachers senior to the one retained junior teacher, they would not have been retained in any event. Only the most senior of them would have been retained, and as to that teacher, the error by the district was prejudicial. As to the others, the error was not prejudicial. Pursuant to section 44949(c)(3), a nonprejudicial error does not constitute a cause to dismiss the charges.

In *Alexander*, the court after concluding the school district acted improperly, instructed the lower court to reexamine the district's decisions in the following language:

*Because at least some of the persons skipped should have received the notices, a corresponding number of the most senior of the employees who were not reemployed must have been improperly given notices. The trial court must determine which of the Teachers suffered prejudicial error. Alexander v. Board of Trustees of the Delano Joint Union High School District, supra at 576.*

Section 44949(c)(3) and *Alexander* therefore require the District to retain only that number of senior teachers which corresponds to the number of junior teachers the District improperly retained. There is nothing in sections 44955(b) and (d) that support respondents' argument that all senior qualified employees must be retained.

16. Cause exists under Education Code sections 44949 and 44955 for the District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the Amended Accusation. It is recommended that the Board give respondents, except those indicated in Legal Conclusions 3, 8, 10, and 14, notice before May 15, 2004, that their services are longer be required by the District.

## ORDER

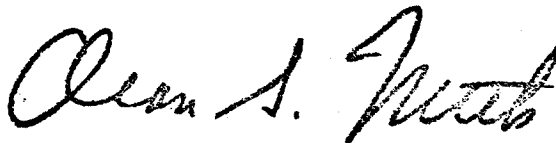
1. The Accusations served on respondents Shelley Bateman, Lida Schneider, Mel Sims, Melissa Hamerla, Kenny Donovan, Mary Ragland, Gregory Crow, James Baty, Christian Kleibacker, Terry Roche, Liza Miller, and Michael Maley are not sustained and the Accusations related to those respondents are dismissed pursuant to Legal Conclusions 3, 8,

10, and 14. Pursuant to the District's action, the Accusations against the following respondents are dismissed: Alecia Balich, Michelle Ballein, John Beck, Joanne Beckman, Sherry Blits, Jamie Brown, Kevin Bryant, Christine Butorac, Sharon Connelly, Erin Dasher, Cynthia Dawson, Tonya Finely, Elizabeth Gallegos, Nathan Green, Sheri Hamblin, Alison Han, Charles Hemsley, Richard Holk, Janet Jones, Richard Kreuger, John Kunishimia, Sylvia Lagunas, Karen Lang, Emily Lao, Joe Ledesma, Lisa Lekkerkerk, Kerry Lewis, Heidi Lopez, Brandi Mack, Suzanne MacKay, Genevieve Manning, Stacy McCafferty, Virginia McMahon, Norma Mendoza, William Moser, Erin Mounce, Jennifer Orr, Laura Pees, Michelle Penalber, Jennifer Reading, Carol Sommerville, Kelly Southard, Marquita Stallcup, Christopher Stevens, Roger Talley, Sarah Tibbets, Dana Toolson, Dawn Torres, Kristi Toth, Stephanie Tschetter, Cynthia Valenta, Jason Watts, Michael Weaver, Glenn Whetzel, Albert Williams, and Cynthia Williams.

2. The Accusations served on the remaining respondents listed on Exhibit A are sustained. Notice shall be given to each respondent before May 15, 2004 that his or her services will not be required for the 2004-05 school year because of the reduction of particular kinds of services.

Notice shall be given in inverse order of seniority.

DATED: 5/5/04



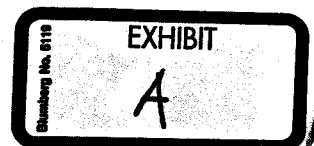
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ALAN S. METH  
Administrative Law Judge  
Office of Administrative Hearings

# CHINO VALLEY UNIFIED SCHOOL DISTRICT

## PROPOSED LAYOFF LIST (WITH FTE)

1.	Abel, Lorraine	1.0	41.	Crow, Gregory	1.0
2.	Abouelsood, Ahmed	1.0	42.	Cuellar, Charles	1.0
3.	Adams, Tracy	1.0	43.	Cummins, Paul	1.0
4.	Aguila, Elizabeth	1.0	44.	Cutler, Melinda	1.0
5.	Alaniz, Jesus	1.0	45.	Davis, Catherine	1.0
6.	Allen, Cynthia	1.0	46.	Davis, Jason	1.0
7.	Altenburg, Jeannetta	0.8	47.	Davis, Mary	1.0
8.	Ambrosia, Felicia	1.0	48.	Delgado, Sean	1.0
9.	Anderson, Megan	1.0	49.	Dennard, Eric	1.0
10.	Annett, Jessica	1.0	50.	Desai, Neal	1.0
11.	Armijo, Robert	1.0	51.	Dickson, April	1.0
12.	Arnold, Gregory	1.0	52.	Donoho, Julie	1.0
13.	Arvizu, Grace	1.0	53.	Donovan, Kenny	1.0
14.	Baeza, Art	1.0	54.	Dugbartey Smith, Claudia	1.0
15.	Bailey, Charlene	1.0	55.	Erbst, Robert	1.0
16.	Ballard, Jenny	0.6	56.	Evans, Angela,	1.0
17.	Banowetz, Ivy	1.0	57.	Everson, Heather	1.0
18.	Bartolo, Monica	1.0	58.	Figgins, Amanda	1.0
19.	Bateman, Shelly	0.6	59.	Fish, Downi	1.0
20.	Batista, Diego	1.0	60.	Fjelsted, Daniel	1.0
21.	Baty, James	1.0	61.	Flores-Cornejo, Sindy	1.0
22.	Bolton, David	1.0	62.	Friel, Elizabeth	1.0
23.	Boonstra, Jodi	0.5	63.	Friesen, Sandra	1.0
24.	Bub, Derek	1.0	64.	Fritz, Phillip	1.2
25.	Busch, Nikki	1.0	65.	Galle, Paul	0.6
26.	Bustamante, Edward	1.0	66.	Gibbs, Lucia	1.0
27.	Caceres, Mia	0.4	67.	Gironas, Kattia	0.6
28.	Caforio, Jennifer	0.4	68.	Goller, John	0.2
29.	Calabrese, Amber	1.0	69.	Gracia, Valerie	1.0
30.	Campbell, Kristin	1.0	70.	Gumz, Julie	1.0
31.	Canjura, Monica	1.0	71.	Gunderson, Matthew	0.4
32.	Cardinale, Megan	1.0	72.	Hafty, Susan	1.0
33.	Carlson, Judith	1.0	73.	Hall, Sherry	1.0
34.	Casas, Linda	1.0	74.	Hallett, Melanye	1.0
35.	Ciccone, Thomas	1.0	75.	Hamerla, Melissa	1.0
36.	Conacher, Ian	0.4	76.	Harris, Constance	1.0
37.	Connell, Douglas	1.0	77.	Hartley, Sally	1.0
38.	Cook, Claude	1.0	78.	Heacock, Jacqueline	1.0
39.	Couron, Marisa	1.0	79.	Heisel, Gail	1.0
40.	Crawford, Julie	1.0	80.	Helmcke, William	1.0





81.	Herrera, Marci	1.0	127.	Miller, Liza	1.0
82.	Hicks, Amber	1.0	128.	Milligan, Janine	1.0
83.	Hill, Tracy	1.0	129.	Molett, Stephanie	0.4
84.	Hirst, Kristi	1.0	130.	Molnar, Nancy	1.0
85.	Hobby, Bobbie	0.8	131.	Moncayo, Arturo	1.0
86.	Holnbach, Dena	1.0	132.	Moore, Jason	1.0
87.	How, Matthew	1.0	133.	Moore, Larry	1.0
88.	Howarth, Stacy	1.0	134.	Mullings, Julie	1.0
89.	Hunt, Ronald	1.0	135.	Murillo, Christopher	1.0
90.	Itagaki, Shirl	1.0	136.	Murphy, Stephanie	1.0
91.	Jenkins, Sean	1.0	137.	Newvine, Michael	1.0
92.	Jensen, Jeffrey	1.0	138.	Ojinaga, Paulette	0.6
93.	Johnson, Suzette	1.0	139.	O'Keefe, Martha	1.0
94.	Johnson, Traci	1.0	140.	Orioli, Zahira	0.9
95.	Kammer, Sandra	1.0	141.	Oswald, Regina	1.0
96.	Karpontinis, George	1.0	142.	Pagliero, Deborah	1.0
97.	King, Joanne	1.0	143.	Parks, Susan	0.8
98.	King, Nina	1.0	144.	Pearl, Vicky	1.0
99.	Kishiyama, Patricia	1.0	145.	Pelonero, Tanya	1.0
100.	Kittlaus, Marianne	1.0	146.	Pena, Rosela	1.0
101.	Kleibacker, Christian	1.0	147.	Perea, Joleen	1.0
102.	Knapp, Angela	1.0	148.	Pillasch, Jamie	1.0
103.	Koenig, Christie	1.0	149.	Polite, Coby	1.0
104.	Larsson, Monica	1.0	150.	Prescott, Christopher	0.2
105.	Leatherwood, Joe	1.0	151.	Purcell, Anna	1.0
106.	Legazcue, Monique	1.0	152.	Ragland, Mary	1.0
107.	Levy, Yvonne	1.0	153.	Ramstack, Maureen	1.0
108.	Lin, James	0.2	154.	Randall, Lou	0.8
109.	Lindsay, Dyan	1.0	155.	Raya, Joseph	1.0
110.	Lohoff, Tammy	1.0	156.	Reed, Will	1.0
111.	Lopez, Elizabeth	0.9	157.	Reyes, Albert	1.0
112.	Lovelace, Luther	1.0	158.	Reyes, Kelly	1.0
113.	Lucas, Lynette	1.0	159.	Reynolds, Leila	1.0
114.	Ma, Sherry	0.2	160.	Rich, Nancy	1.0
115.	Maley, Michael	1.0	161.	Ritchie, Lauryi	1.0
116.	Martello, Rhonda	1.0	162.	Rivera, Jose	1.0
117.	Martin, Richard	1.0	163.	Rivera, Sherri	1.0
118.	Martinez, Carmen	0.6	164.	Roche, Terry	0.8
119.	Mc Camish, Julie	1.0	165.	Roche, Tom	0.6
120.	McIntosh, William	1.0	166.	Rode, Christine	1.0
121.	McKellip, Robert	1.0	167.	Rodriguez, Aaron	0.6
122.	McNally, Brianne	1.0	168.	Rodriguez, Deanna	1.0
123.	McQuilliams, Michael	1.0	169.	Roenicke, Karen	0.8
124.	Miller, Erica	0.8	170.	Rowcliffe, Tamra	1.0
125.	Miller, John	0.4	171.	Rumbin, Benjamin	1.0
126.	Miller, Kristal	1.0	172.	Saavedra, Monica	1.0

173.	Sainz De La Pena, Susana	1.0	190.	Teran, Cecelia	1.0
	Sandoval-Bernard,		191.	Thie, John	1.0
174.	Michelle	1.0	192.	Thom, Roberta	1.0
175.	Schneider, Lida	1.0	193.	Titus, Michael	1.0
176.	Seanez, Christina	1.0	194.	Torres, Armando	1.0
177.	Sedlack, Jessica	1.0	195.	Tran, Paige	0.5
178.	Silva, Michael	1.0	196.	Trapp, Tammy	1.0
179.	Sims, Christa	1.0	197.	Tzukev, Dragomir	1.0
180.	Sims, Mel	0.8	198.	Vasquez, Patricia	0.2
181.	Sinkwich, Mary	1.0	199.	Walker, Raymond	1.0
182.	Smets, Heather	0.2	200.	Waters, Dawn	1.0
183.	Smith, Eugene	1.0	201.	White, Cynthia	1.0
184.	Smith, Samantha	1.0	202.	Wicker, Tina	1.0
185.	Spaun, Tina	0.9	203.	Woods, Susan	1.0
186.	Staunton, Marcia	1.0	204.	Wright, Geoffrey	1.0
187.	Stickley, James	1.0	205.	Ylagan, Rohanna	1.0
188.	Stow, Paula	0.4	206.	Young, Cynthia	1.0
189.	Tee, Carrie	1.0	207.	Zuk, Karen	1.0