

BEFORE THE BOARD OF TRUSTEES
SPRECKELS UNION SCHOOL DISTRICT

In the Matter of the Accusation Against:

Michelle Ball, Elizabeth Belz-Templeman,
Nadene Dermody, Stephen Dodd, Rosie
Filice, Karen Hawkins, Rose Kershing,
Judith Marcy, Kristin Mooney, Holly
Preece, Roberta Roberts, Diana Siegel,
Maria Sigala, Carolyn Starmer, Kristina
Szaszy-Jones, Jaime L. Torres,

Respondents.

OAH No. N2004020461

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on April 15, 2003, in Salinas, California.

Sarah Levitan Kaatz of Lozano Smith represented the Spreckels Union School District.

Michelle A. Welsh of Stoner, Welsh & Schmidt represented respondents Michelle Ball, Elizabeth Belz-Templeman, Nadene Dermody, Stephen Dodd, Rosie Filice, Karen Hawkins, Rose Kershing, Judith Marcy, Kristin Mooney, Holly Preece, Roberta Roberts, Diana Siegel, Maria Sigala, Carolyn Starmer, Kristina Szaszy-Jones, Jaime L. Torres, all of whom were present except for Stephen Dodd.

The matter was submitted on April 15, 2004.

FACTUAL FINDINGS

1. Harold Kahn made and filed the accusation in his official capacity as Superintendent of the Spreckels Union School District (District).
2. Respondents are certificated employees of the District.
3. On March 9, 2004, Superintendent Kahn recommended to the District's Board of Trustees (Board) that the Board adopt a resolution to reduce or discontinue particular kinds of services.

4. On March 9, 2004, the Board adopted Resolution No. 03-04/20 reducing or discontinuing particular kinds of services and directing the Superintendent to send appropriate notices to all employees whose services may be terminated.

5. On or about March 11, 2004, the Superintendent gave written notice to respondents of the recommendation that their services will not be required for the ensuing school year. Each notice set forth the reasons for the recommendation, attaching a copy of Board Resolution No. 03-04/20.

6. All respondents are deemed to have filed timely requests for hearing to determine if there is cause for terminating their services for the ensuing school year. An accusation was served on respondents, all of whom are deemed to have filed timely notices of defense. All prehearing jurisdictional requirements have been met.

7. The Board took action to reduce or discontinue the following particular kinds of services effective June 30, 2004:

<u>SERVICES</u>	<u>FTE</u> ¹
Elementary (K-5)	8.0
Middle School Single Subject or Core	
* Literature	.5
* Language Arts	.5
* Math	.5
* Science	.5
* Physical Education	.5
* Social Science	.5
Music	1.0
Title I	1.0
Principal, Spreckels School	1.0
Principal/District Program Coordinator	1.0
District Psychologist/Coordinator of Special Education Services	<u>1.0</u>
TOTAL REDUCTION	16.0

8. The Board's reduction of services was prompted by a severe financial crisis in the District.

9. By the time of the hearing the District had rescinded the layoff notice to respondent Nadene Dermody as a result of the Board's rescission of the 1.0 FTE reduction in Music.

10. At the hearing the District rescinded the layoff notice to respondent Judith Marcy.

¹ Full-time equivalent positions.

11. There is no attrition for the District to take into account, because there are no retirements or resignations of certificated employees that will be effective before the 2004-05 school year.

12. Respondents contend that the proposed 1.0 FTE reduction in Title I services should be disallowed because this reduction will leave the District unable to provide mandated ELD (English Language Development) services next year. This contention is without merit. The mandated ELD services currently provided by the teacher holding the Title I position to be cut will be provided in a different manner next year. Although District administrators have not reached a final decision on a plan, they have determined that the required services can be provided by reconfiguring the teaching assignments of teachers authorized to provide these services (those holding a CLAD or BCLAD certification).² The District will be able to administer the required testing with the two teachers currently doing so in Title I positions. (No other teachers have the special training qualifying them to administer this testing.) The District is not required at this point to have a final plan in place for ELD services next year.

13. Board Resolution No. 03-04/20 contains the following provision for determining relative seniority among employees with the same first date of paid service in probationary status:

...[F]or the purposes of determining the order of layoff for employees with the same seniority date, the Governing Board determines the needs of the District and its students, for the 2004-05 school year, are in priority order as follows: (1) greatest number of years of teaching experience with the District; (2) possession of a clear credential; (3) greatest breadth of experience teaching classes with multiple grades; (4) greatest breadth of experience teaching different grade levels in a K-5 school (for K-5) teachers or the greatest breadth of experience teaching in different grade levels in areas authorized by credential (for middle school teachers); (5) bilingual credential in English/Spanish and/or possession of a CLAD or BCLAD certification.

14. To break seniority ties the District applied the above criteria serially, i.e., if a tie could be broken utilizing the first criterion the District did not consider the other criteria, and the District utilized the criterion next in order only if application of the previous criterion did not break the tie. The District did not have to go beyond the third criterion to break any of the ties involving respondents.

² CLAD stands for Cross-Cultural, Language and Academic Development, and BCLAD stands for Bilingual, Cross-Cultural, Language and Academic Development.

15. Superintendent Kahn explained that the priority order of the tie-breaking criteria reflects the Board's philosophy of how best to meet the needs of the District and its students. The rationale for giving the highest priority to the number of years of teaching experience in the District is the belief that a teacher who has been teaching longer in the District will have a greater understanding of the students, the District and the community, and this translates into a greater opportunity for success as a teacher. The Board considered breadth of experience teaching classes with multiple grades and teaching different grade levels to be more important than CLAD or BCLAD certification.

16. Respondents challenge the tie-breaking criteria and how they were applied. They contend that the criteria and their relative priority do not meet the needs of the District and its students, especially as to CLAD or BCLAD certification being given the lowest priority at a time when the District needs teachers with such certification to provide ELD services. Respondents also claim that the District failed to comply with the Board's resolution when it applied the tie-breakers serially rather than using a point system where a teacher is given a certain number of points for each criterion he or she meets.

The Board has broad latitude in establishing and applying tie-breaking criteria. Education Code section 44955³ requires only that the District determine the order of seniority for employees with the same first date of paid service "solely on the basis of needs of the district and the students thereof," and the District has met this mandate. Respondents may disagree with the Board's tie-breaking criteria and how they were prioritized, but the criteria and their priority order are rationally related to the needs of the District and its students. While there is arguably some ambiguity in the Board's resolution as to how the tie-breaking criteria should be applied, the District's serial application of the tie-breakers was a reasonable way to effectuate the Board's stated priorities.

17. The parties stipulated to the following matters concerning the seniority and credentials of respondents:

- a. Michelle Ball has completed all the CLAD requirements and applied for certification from the Commission on Teacher Credentialing (CTC).
- b. Elizabeth Belz-Templeman's seniority date is September 14, 2000, and that gives her permanent status.
- c. Rosie Filice has an English Language Acquisition (ELA) authorization.
- d. Rose Kershing has a CLAD certification, and it is on file with the District.
- e. Judith Marcy's seniority date is August 20, 1998, based on her service as an intern. She has CLAD and SDAIE⁴ certification and is teaching English under a section 44256 board resolution for the current school year only.
- f. Carolyn Starmer's standard teaching credential counts as a clear credential.

³ All statutory references are to the Education Code.

⁴ Specially Designed Academic Instruction in English.

18. Respondent Holly Preece asks that her seniority date be changed from August 25, 1999 to August 19, 1999. Preece testified that her paid status in a probationary position began on August 19, 1999 before school started that year because she had to move to a different classroom. (She apparently had been a long-term substitute replacing someone on leave who at the last minute came back.) Preece is entitled to have her seniority date changed to August 19, 1999. This change will not affect her place on the seniority list, however.

Preece testified that she has completed the requirements for a clear teaching credential and submitted the documentation to CTC. The District agreed to change its records to reflect the clear credential once it gets confirmation that the credential has been issued by CTC.

19. Respondent Carolyn Starmer is a permanent employee whose first date of paid service in a probationary position was August 21, 2000. Her seniority date on the District's seniority list is August 21, 2000. Starmer was a respondent in the District's layoff proceeding for the 2003-04 school year, and at the administrative hearing in that matter on April 4, 2003 she stipulated that August 21, 2000 was her seniority date.⁵ On February 9, 2004, Starmer signed a Verification of Employment Information form confirming the accuracy of the District's information about her employment, including her seniority date of August 21, 2000.

Starmer now claims that her seniority date should be changed to sometime in March 2000. In December 1999 she was hired for a long-term substitute position to replace Victoria McDowell during her pregnancy leave from the beginning of January to mid-February 2000. As Starmer recalls, McDowell took an additional two weeks of leave. When McDowell returned to work it was to share her position with Starmer. On March 13, 2000 Starmer signed a temporary contract with the District for a .50 FTE position. She taught under this contract through the end of the 1999-2000 school year. Starmer believes McDowell returned from leave (and they began sharing the position) before March 13, 2000.

Starmer asserts that her correct seniority date is the date in early March 2000 when she began teaching in the shared position with McDowell. She first argues that since she was not replacing an employee on leave she must be considered a probationary employee. (Section 44920, in essence, prohibits a school district from having a greater number of temporary employees than employees on leave.) It is unknown how many employees were on leave in March 2000 and how many temporary employees the District had. It is also unknown whether McDowell was considered to still be on leave for .50 FTE of her position or whether she had relinquished that .50 FTE when she returned to work half-time.

Starmer next argues that under *Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal.4th 911, she is entitled to probationary status because she did not receive written notice of her status as a temporary employee (i.e., her temporary contract)

⁵ Official notice is taken of the proposed decision of Administrative Law Judge Mary-Margaret Anderson in OAH No. N2003030561, in which Starmer's stipulation is recited in the findings. It is presumed that the District adopted the proposed decision as its decision in the matter.

until after she started teaching in the shared position covered by the contract. In January 2003 the California Supreme Court held in *Kavanaugh* that under section 44916⁶ a teacher who was not given written notice of her status as a temporary employee on or before her first day of paid service must be considered a probationary employee.

If Starmer's seniority date were changed from August 21, 2000 to sometime in March 2000, she would move up on the seniority list ahead of four respondents – Karen Hawkins, Maria Sigala, Rose Kershing and Jaime Torres – who share the August 21, 2000 seniority date but who came out ahead of Starmer when the tie-breaking criteria were applied. Starmer would still be laid off if the District makes all the proposed cuts in services.

The District argues that Starmer's claim to change her seniority date should be barred by the three-year statute of limitations applicable to such claims. (See *Vittal v. Long Beach Unified School District* (1970) 8 Cal.App.3d 112.) The District also argues that under *Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796 and *Degener v. Governing Bd.* (1977) 67 Cal.App.3d 689, a school district is not required to consider information it did not have before March 15.

Assuming that Starmer started teaching in the temporary shared position before she signed the contract on March 13, 2000, under section 44916 as clarified by *Kavanaugh* she would be entitled to probationary status as of the date she started teaching in that position. The three-year statute of limitations, if applicable, would not have started running until January 2003 when the *Kavanaugh* decision was issued. And *Campbell* and *Degener* pertain to teachers' credentials about which a school district has no information before March 15. The District has had all the information upon which Starmer's *Kavanaugh* claim is based – what it did not know before March 15 was that Starmer was making the claim.

While neither party brought up the fact that Starmer stipulated in the 2003 layoff hearing that August 21, 2000 was her seniority date, it is this stipulation that defeats her current claim to an earlier seniority date. Starmer was represented in that proceeding by the same legal counsel, and she had the opportunity to raise and litigate a *Kavanaugh* seniority claim at that time. In the 2003 hearing Starmer offered evidence regarding her seniority in the form of a stipulation, and the administrative law judge made a finding pursuant to that

⁶ Section 44916 states, in pertinent part:

...At the time of initial employment during each academic year, each new certificated employee of the school district shall receive a written statement indicating his employment status and the salary that he is to be paid. If a school district hires a certificated person as a temporary employee, the written statement shall clearly indicate the temporary nature of the employment and the length of time for which the person is being employed. If a written statement does not indicate the temporary nature of the employment, the certificated employee shall be deemed to be a probationary employee of the school district, unless employed with permanent status.

stipulation. Under the doctrine of collateral estoppel, Starmer is bound by that finding. Starmer's seniority date shall not be changed from August 21, 2000.

20. Respondent Kristina Szaszy-Jones is a "university intern" in a teaching internship program established by the District in cooperation with Chapman College under the authority of the Teacher Education Internship Act of 1967.⁷ She started teaching in the District on August 20, 2001, originally under an emergency permit and then as a pre-intern. (She completed her pre-internship in June 2003.) Szaszy-Jones challenges the District's failure to classify her as a probationary employee and include her on the seniority list. This challenge is rejected. The statutory scheme authorizing university interns has no provision for classifying such interns as probationary employees. Indeed, section 44464 states that "the rights provided by Sections 44948 [protecting probationary employees from mid-year dismissal or suspension without cause] and 44949 [governing layoff of permanent and probationary employees] shall not be afforded to interns." (This is in contrast to the statutory treatment of district interns, who are required to be classified as probationary employees under section 44885.5.)

21. Respondents contend that the District has not established that the layoffs are "related to the welfare of the schools and the pupils thereof" as required by Education Code section 44949, but this contention is without merit. In determining how to allocate its resources, a school district is given discretion to reduce or discontinue particular kinds of services. While almost any reduction or elimination of services is arguably detrimental to at least some students (not to mention school employees), in the absence of a showing that the district's decision is arbitrary or capricious, its action is related to the overall welfare of the schools and its pupils. In this case, the decision to reduce or discontinue the services set forth in Finding 7 is neither arbitrary nor capricious but rather a proper exercise of the District's discretion.

22. All contentions made by respondents not specifically addressed above are found to be without merit and are rejected.

23. No certificated employee junior in seniority to any respondent is being retained by the Board to perform services that any respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. Cause exists because of the reduction or discontinuation of particular kinds of services pursuant to section 44955 to give notice to respondents that their services will not be required for the 2004-05 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of section 44949.

⁷ §§ 44450, et seq.


3. Cause exists to change the seniority date of respondent Holly Preece from August 25, 1999 to August 19, 1999.

ORDER

1. The District shall change the seniority date of respondent Holly Preece from August 25, 1999 to August 19, 1999.

2. Notice may be given to respondents that their services will not be required for the 2004-05 school year because of the reduction or discontinuation of particular kinds of services.

DATED: April 22, 2004


NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings