

BEFORE THE  
GOVERNING BOARD OF THE  
PLACER HILLS UNION SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Non-  
Reemployment/Reduction in Force of:

VICKIE ENSLEY  
JILL HOBBS  
JILL KIRKLAND  
WENDY KNAPP  
SARA LIEBERT  
DAVID LIEBERT  
JENNIFER LYNN  
GENA McARDLE  
SUE McGLOTHLAN  
JOANNE MORTON  
TAMI NICHOLAS-HALL  
ANNE-MARIE OLSEN  
JEFF RISWOLD  
TRACY STOKES

OAH No. 2009020658

Respondents.

**PROPOSED DECISION**

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, on April 27, 2009, in Meadow Vista, California.

Heather M. Edwards, Attorney at Law, represented the Placer Hills Union School District.

Andrea Price, Attorney at Law, represented respondents.

Evidence was received, the record was closed and the matter was submitted on April 27, 2009.

## FACTUAL FINDINGS AND DISCUSSION

1. Fred H. Adam is the Superintendent of the Placer Hills Union School District (District). His actions and the actions of the District Governing Board (Board) were taken in their official capacities.

2. On March 5, 2009, Superintendent Adams recommended to the Board that notice be given to respondents, pursuant to Education Code sections 44949 and 44955, that their services would be reduced or not required for the 2009-2010 school year. In recommending reductions in certificated staff, Mr. Adam considered the District's projected decline in student enrollment from 1100 to 1060 students, and the fact that there is a "catastrophic state budget crisis."

### *Board's Resolutions*

3. On March 5, 2009, the Board determined that it was necessary to decrease programs and services and thus it was necessary to reduce teaching services affecting 17.0 full-time equivalent (FTE) positions. The Board adopted Resolution No. 8: 08-09 (Resolution), which provided for the reduction or elimination of multiple particular kinds of services (PKS). In order to limit the number of reductions, the District considered all positively assured attrition, including resignations, retirements and other permanent vacancies. The PKS reductions and eliminations affecting respondents, and at issue in this hearing, are:

### Certificated Positions

Self-Contained Classroom teaching positions	11.1 FTE
Single Subject teaching positions	5.4 FTE
Single Subject Social Science (3.0 FTE)	
Single Subject English (1.0 FTE)	
Single Subject Physical Education (1.0 FTE)	
Single Subject Music (.40 FTE)	
<u>Counseling position</u>	<u>.50 FTE</u>
Total Certificated Reductions	17.0 FTE

4. On March 1, 2006, the Board, in conjunction with the Superintendent and the Teachers' Union, developed tie-breaking criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the District on the same date (seniority date). The Memorandum of Understanding (MOU) provided the following:

1. Possession of a current valid preliminary or clear credential wins;
2. If a tie still exists, possession of a clear credential wins;
3. If a tie still exists, possession of a single subject credential in any academic area in addition to a multiple subject credential wins;
4. If a tie still exists, possession of a Masters Degree in Education or core subject or National Board Certification wins;
5. If a tie still exists, possession of any supplemental authorization in any subject area wins;
6. If a tie still exists, possession of an English Language Development Certificate (BLCAD [sic] or CLAD or SDAIE or SB 1969) wins;
7. If a tie still exists, the employee shall be ranked in order by total years of public school teaching experience including experience outside this district. The most years of experience shall be ranked the highest;
8. If a tie still exists, the tie will be broken by lottery. In the lottery, the employee drawing the lowest number shall be retained. If necessary, any additional employees shall be retained in rank order of the lowest number drawn. An official of CTA/ABEA shall be present during the drawing.
9. If it becomes necessary to resolve a tie between employees who lost at any level, 1-7 above, the tie shall be broken by use of the lottery process described in #8.

5. Respondents are probationary and permanent certificated employees of the District. On March 6, 2009, in accordance with the Board's Resolution, the District served on each respondent written notice pursuant to Education Code sections 44949 and 44955 that their services would be reduced or would not be required for the 2009-2010 school year. Each written notice set forth the reasons for the recommendation and attached a copy of the Board's Resolution reducing the certificated staff by 17.0 FTE. Respondents timely requested a hearing to determine if there is cause for not reemploying them for the ensuing school year. Six affected teachers did not request a hearing,<sup>1</sup> were not present at the hearing on April 27, 2009, and were not represented by Ms. Price or any other counsel at the hearing. They, therefore, waived any right they may have had to a hearing to contest their layoff. (Ed. Code, § 44949, subd. (b).)

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<sup>1</sup> The names and dates of hire of the six certificated employees who did not request a hearing are: (1) Vickie Ensley – February 23, 1989; (2) Jill Hobbs - August 18, 2006; (3) Sue McGlothlan – October 20, 2008; (4) Joanne Morton – September 4, 2008; (5) Tami Nicholas-Hall – August 23, 2007; and (6) Anne-Marie Olsen – August 21, 2003.

6. The Superintendent made and filed Accusations against the remaining respondents. The Accusations with required accompanying documents and blank Notices of Defense were timely served on respondents. Respondents timely filed Notices of Defense to the Accusations.

#### *District's Statement of Need*

7. On April 19, 2007, the Board approved and issued a CLAD/CTEL/SDAIE STATEMENT OF NEED (Statement) advising certificated employees that they are required to possess a Crosscultural, Language and Academic Development (CLAD ) Certificate, a California Teachers of English Learners (CTEL) Certificate, or an approved Specially Designed Academic Instruction delivered in English (SDAIE) Certificate in order to meet the needs of the district's students, and to ensure compliance with California Department of Education (CDE) regulations pertaining to English Language Learner (ELL) students.<sup>2</sup> The Statement informed certificated employees that they "have until December 31, 2008 to meet the requirement." The Statement further notified certificated employees that "in the event of a layoff/reduction in force of teachers, those teachers with less seniority who have CLAD, CTET or approved SDAIE certification would be skipped while teachers with more seniority who do not have CLAD, CTET or approved SDAIE certification will be subject to layoff."

#### *District's Layoff Procedures*

8. The District maintains a Seniority List which contains data obtained from the District's records and its employees, including, but not limited to, employees' names; sites of assignment; current assignments; seniority dates (first date of paid service); credentials; addresses; certificates; degrees; status as tenured, probationary or temporary; FTE hours; and longevity. The District used the Seniority List to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District then employed "bumping" and "skipping" criteria to create the final list of certificated employees who would receive preliminary layoff notices.

#### *Certificated Positions*

9. The Self-Contained Classroom teaching positions are being reduced by 11.1 FTE. Mr. Adam identified the certificated employees performing these services and applied "skipping" and "bumping" criteria to determine whether or not they would receive a layoff notice. As a result of this process, and based on the seniority date and credentials of each certificated employee, Mr. Adam determined the following:

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<sup>2</sup> At hearing, Superintendent Adam testified that on December 7, 2007, after meeting with the Teachers' Association, he offered a \$750 stipend as a small token of appreciation to all certificated employees who completed the CLAD, CTET or SDAIE training course and certification process.

**Tracey Stokes** has a seniority date of 9/18/06. She holds a Professional Clear Multiple Subject Credential with CLAD Certificate, and is currently assigned to teach 4th Grade at Weimar Hills School. Her services were eliminated by 1.0 FTE pursuant to the Board's Resolution to eliminate self-contained teaching positions in the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services. There is no evidence that certificated employees with less seniority than Ms. Stokes are being retained to provide services for which she is certificated and competent to provide.

**Sara Liebert** has a seniority date of 8/24/06. She holds a Clear Multiple Subject Credential with CLAD Certificate, and has been board approved to teach Art. She is currently assigned to teach 2nd/3rd Grade at Weimar Hills School. Her services were eliminated by 1.0 FTE pursuant to the Board's Resolution to eliminate self-contained teaching positions in the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services. There is no evidence that certificated employees with less seniority than Ms. Liebert are being retained to provide services for which she is certificated and competent to provide.

**Jill Kirkland** has a seniority date of 8/18/06. She holds a Clear Multiple Subject Credential with CLAD Certificate, and is currently assigned to teach Electives at Weimar Hills School. Her services were eliminated by 1.0 FTE pursuant to the Board's Resolution to eliminate self-contained teaching positions in the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services. There is no evidence that certificated employees with less seniority than Ms. Kirkland are being retained to provide services for which she is certificated and competent to provide.

**David Liebert** has a seniority date of 8/18/06. He holds a Clear Multiple Subject Credential with CLAD/Supplemental Social Science and English Certificate. He is currently assigned to teach 5th Grade at Weimar Hills School. His services were eliminated by 1.0 FTE pursuant to the Board's Resolution to eliminate self-contained teaching positions in the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services. There is no evidence that certificated employees with less seniority than Mr. Liebert are being retained to provide services for which he is certificated and competent to provide.

**Gena McArdle** has a seniority date of 9/24/04. She holds a Professional Clear Multiple Subject Credential, Supplemental English Authorization and CLAD Certificate. She is currently assigned to teach Kindergarten at Sierra Hills School. Her services were eliminated by 1.0 FTE pursuant to the Board's Resolution to eliminate self-contained teaching positions in the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services. There is no evidence that certificated employees with less seniority than Ms. McArdle are being retained to provide services for which she is certificated and competent to provide.

**Jennifer Lynn** has a seniority date of 8/18/04. She holds a Professional Clear Multiple Subject Credential with Specially Designed Academic Instruction in English (SDAIE), and is currently assigned to teach 1st Grade at Sierra Hills School. Her services were eliminated by 1.0 FTE pursuant to the Board's Resolution to eliminate self-contained teaching positions in

the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services. There is no evidence that certificated employees with less seniority than Ms. Lynn are being retained to provide services for which she is certificated and competent to provide.

**Wendy Knapp** has a seniority date of 9/28/82. She is the third most senior certificated employee in the District. She holds a Life Standard Elementary Credential, and is currently assigned to teach 3rd Grade at Sierra Hills School. Her services were eliminated by 1.0 FTE pursuant to the Board's Resolution to eliminate self-contained teaching positions in the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services, and because she does not possess the qualifications to teach English Language Learner students, pursuant to Factual Finding 7.

Ms. Knapp testified that she did not apply for the CLAD/CTEL/SDAIE training because she intended to retire in June 2009. Her plans changed on April 3, 2009, however, when she learned from the teachers' union that it would be beneficial for her to work one more year before retiring. Ms. Knapp has applied for a 60 percent contract for the 2009-2010 school year, but her request has not yet been presented to the Board for approval. Ms. Knapp argued that certificated employees with less seniority than Ms. Knapp are being retained to provide services for which she is certificated and competent to provide.

**Jeffrey Riswold** has a seniority date of 9/2/82. He is the second most senior certificated employee in the District. He holds a Life Single Subject/Music Credential, and is currently assigned to teach Music at Sierra Hills School. His services were reduced by .40 FTE pursuant to the Board's Resolution to reduce the single subject music teaching position in the 2009-2010 school year, because of the reduction and discontinuance of particular kinds of services, and because he does not possess the qualifications to teach English Language Learner students, pursuant to Factual Finding 7.

Mr. Riswold testified that during a conversation in February 2009, Superintendent Adam indicated to him that "he is planning to hire two full-time music teachers if something else doesn't happen that is catastrophic." Mr. Riswold admitted that he "knew what was happening was catastrophic," but did not expect to receive a layoff notice. Mr. Riswold testified further that when he received his preliminary layoff notice in March 2009, he "signed up for the CTET prep class for the test," and will take the test on June 13, 2009. Mr. Riswold argued that certificated employee Jonathan Oates has less seniority than Mr. Riswold and is being retained to provide services for which he is certificated and competent to provide. Mr. Oates has a seniority date of 8/21/03, and is being retained because he holds a CLAD Certificate pursuant to the Board's Statement of Need, as set forth in Factual Finding 7.

#### *Skipping Teachers with CLAD, CTET or approved SDAIE certification*

10. Superintendent Adam testified that the decision to skip junior certificated employees with ELL certificates was based on Department of Education regulations, in conjunction with the settlement in the *Williams* lawsuit, which prohibit a district from staffing its schools discriminatorily. Superintendent Adam stated that it "only requires one student in

the classroom to impose the qualification requirement on the teacher,” and “English Language Learners have to be placed throughout the district as all other students.” Superintendent Adam also voiced the District’s concerns that unless it retains all teachers with ELL certification, it would be non compliant with the ELL program requirements that all ELL students be placed in a classroom with an ELL teacher. According to Superintendent Adam, it would also be unfair to the teachers who have accomplished their CLAD/CTEL/SDAIE training and certification if the District rescinded the layoff notices served upon respondents Knapp and Riswold.

11. The District’s goal was to have 100 percent of the faculty with ELL certificates by December 31, 2008. The District actively encouraged teachers to obtain ELL certification. It is undisputed that between March 29, 2007 and October 29, 2008, Superintendent Adam issued written memoranda, notices and emails, and personally communicated with certificated employees, including Ms. Knapp and Mr. Riswold, regarding the district’s Statement of Need, and the CLAD/CTEL/SDAIE training courses and certification requirements as set forth in Factual Finding 7. Superintendent Adam also requested periodic updates from each certificated employee. It is also undisputed that Superintendent Adam notified all certificated employees, including Ms. Knapp and Mr. Riswold, that in the event of a layoff/reduction in force, those teachers who had failed to obtain the requisite training and certification by the December 31, 2008 deadline would be subject to layoff. In the current school year, 97 percent of the teachers have their CLAD/CTEL/SDAIE authorization. Three teachers in the District did not obtain their CLAD/CTEL/SDAIE authorization.<sup>3</sup>

12. Respondents Knapp and Riswold jointly argued that because less than two percent of the students in the district are ELL students,<sup>4</sup> the district could easily assign those students to CLAD/CTEL/SDAIE authorized teachers. Respondents also argue that the district is retaining certificated employees who were hired after issuance of the Board’s Statement of Need on April 19, 2007, but do not possess a CLAD/CTEL/SDAIE authorization, and therefore the District cannot rely on the Statement of Need to deprive respondents Knapp and Riswold of their right to provide services for which they are certificated and competent to provide.

13. Superintendent Adam countered by pointing out that many considerations go into the formulation of classrooms, including a balance between boys and girls, and between various learners. The District intends to maintain balanced classes throughout the year, even if an ELL student arrives in the middle of the school year. The District did not produce evidence that each ELL teacher currently has an ELL student in his or her classroom.

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<sup>3</sup> In addition, to Ms. Knapp and Mr. Riswold, the third certificated employee in the District who does not possess a CLAD/CTEL/SDAIE authorization is Brian Buscher, who has a seniority date of 8/25/97, and holds a Life Multiple Subject: Clear Language Development Specialist Certificate.

<sup>4</sup> Superintendent Adam testified that of the 1,100 students in the District, 15 are ELL students.

## *Additional Defenses to Layoff*

14. Mr. Riswold also argued that the Seniority List omitted credentialed employee Alexis Cooper, who teaches a Gifted and Talented Education (GATE) class one day a week at Weimar Hills School. Mr. Riswold testified that he is aware that Ms. Cooper does not have her CLAD Certificate because “she has asked me for information regarding the test.” Superintendent Adam testified that Ms. Cooper is not on the district’s Seniority List because she is not employed as a certificated employee of the district. According to Superintendent Adam, Ms. Cooper has been retained on a private contract basis with the district since August 2008. Respondent did not establish that Ms. Cooper is being retained to perform services that Mr. Riswold is certificated and competent to render. Consequently, the issue regarding Mr. Cooper’s status will not be addressed in this decision.

## LEGAL CONCLUSIONS

1. The District employees receiving notices that their services would not be required next year have all rendered valuable services to the District.

2. Jurisdiction in this matter exists pursuant to Education Code sections 44949 and 44955. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

3. Education Code section 44955, subdivision (b), provides in pertinent part:

Whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, ...or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions 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.

4. Education Code section 44955, subdivision (c), provides that when certificated employees face layoffs due to reduction or elimination of PKS, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers, if the senior teacher has both the credentials and competence to occupy such positions. The intent of the Legislation is clearly to prevent Districts from laying off senior teachers while retaining junior teachers.

5. Education Code section 44955, subdivision (d), establishes four justifications for a school district to skip over a junior employee and terminate a more senior employee. First, a district may skip over a junior teacher and terminate a senior teacher if “the district demonstrates a specific need for personnel to teach a specific course or course of study.” Second, a district may skip if “the district demonstrates a specific need for personnel . . . to provide the services authorized by a services credential with a specialization in . . . pupil personnel services.” Third, a district may skip if “the district demonstrates a specific need for personnel . . . to provide the services authorized by a services credential with a specialization in . . . health for a school nurse.” Fourth, a district may skip to maintain or achieve “compliance with constitutional requirements related to equal protection . . . .”

6. Education Code section 44253.10, subdivision (i), provides, in pertinent part:

The governing board of each school district shall make reasonable efforts to provide limited-English-proficient pupils in need of English language development instruction with teachers who hold appropriate credentials, language development specialist certificates, or cross-cultural language and academic development certificates that authorize English language development instruction. However, any teacher awarded a certificate or certificates of completion shall be deemed certificated and competent to provide the services listed on that certificate of completion. A teacher who completes staff development pursuant to this section may use those hours of staff development to meet the requirements of subdivision (b) of Section 44277.

7. Section 44253.10 provides that the Board shall make **reasonable efforts** to provide limited-English-proficient pupils in need of English language development instruction with teachers who hold appropriate credentials, language development specialist certificates, or crosscultural language and academic development certificates that authorize English language development instruction. Contrary to the District’s assertions at hearing, the Legislature does not require school Districts to place each English Language Learner with an ELL teacher. The Board must make reasonable efforts to accomplish this goal. Termination of senior teachers from employment in favor of junior teachers who hold ELL certificates is an extreme remedy

and far exceeds a “reasonable effort.” The District has made reasonable efforts by providing a training program, incentives and support to teachers pursuing ELL certification. The District has not shown a need to terminate senior teachers when the applicable statute does not make it mandatory that each ELL student be provided an ELL teacher. [Emphasis added.].

8. It is clear from section 44253.10 that the Legislature considered the problem of increasing numbers of English Language Learners and enacted statutes designed to quickly qualify teachers to address some of the pupils’ needs. If the Legislature had determined that the problem was so great that it needed to retain every ELL teacher, it had the opportunity to amend section 44955 to allow junior teachers to displace senior ones in the event of a layoff. The Legislature did not do so.

9. In this case, the District seeks to discharge other wise competent teachers who were hired without the necessity of an ELL certificate and retain junior teachers who have completed CLAD/CTEL/SDAIE training and secured an ELL certificate. Moreover, the District seeks to do so without demonstrating why it requires 100 percent of its teachers to obtain ELL authorization. As 97 percent of the District’s teachers have acquired ELL certificates to provide ELL services to two percent of the District’s student population, the District has failed to establish why it should be permitted to avoid the seniority protection afforded to teachers in order to accomplish the goal of providing instruction for English Language Learners.

10. Cause exists because of the reduction or discontinuation of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents, except Wendy Knapp and Jeffrey Riswold, that their services will not be required for the 2009-2010 school year, as set forth in the Factual Findings. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

11. Cause does not exist pursuant to Education Code section 44955, subdivision (c), to give notice to respondent Wendy Knapp that her services will not be required for the 2009-2010 school year, as set forth in the Factual Findings. Junior employees are being retained to render services which Wendy Knapp’s seniority and qualifications entitle her to render.

12. Cause does not exist pursuant to Education Code section 44955, subdivision (c), to give notice to respondent Jeffrey Riswold that his services will not be required for the 2009-2010 school year, as set forth in the Factual Findings. Junior employees are being retained to render services which Jeffrey Riswold’s seniority and qualifications entitle him to render.

## RECOMMENDATION

1. The Accusations against Wendy Knapp and Jeffrey Riswold are dismissed.

2. Final notices shall be given to the remaining respondents that their services will not be required for the 2009-2010 school year because of the reduction or discontinuation of particular kinds of services.

DATED: May 6, 2009

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REBECCA M. WESTMORE  
Administrative Law Judge  
Office of Administrative Hearings