

BEFORE THE BOARD OF TRUSTEES  
KING CITY JOINT UNION HIGH SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

15 Full-Time Equivalent Certificated  
Employees,

Respondents.

OAH No. 2009030727

**PROPOSED DECISION**

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in King City, California, on April 23, 2009.

Keith Breon, Attorney at Law, Breon & Shaeffer, represented the King City Joint Union High School District (District).

Michelle A. Welsh, Attorney at Law, Stoner, Welsh & Schmidt, represented all of the Respondents.<sup>1</sup>

Submission was deferred to allow the Parties to file closing briefs. Mr. Breon's brief was timely received and marked Exhibit F for identification. Ms. Welsh's brief was timely received and marked Exhibit 4 for identification.

The record closed on May 1, 2009.

**SUMMARY**

The Board of Trustees of the King City Joint Union High School District decided to reduce or discontinue particular kinds of services provided by certificated employees for the 2009-2010 school year for financial reasons. The decision was not related to the competency and dedication of the employees whose services were proposed to be reduced or eliminated.

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<sup>1</sup> Appendix A contains a list of Respondents that remained subject to layoff as of the close of the hearing.

District staff carried out the Board’s decision by using a selection process involving review of credentials and seniority, breaking ties between employees with the same first dates of paid service, and “skipping” teachers with specific qualifications. The selection process complied with Education Code requirements.

### FACTUAL FINDINGS

1. Kim K. Williams filed the Accusation in his official capacity as Interim Director, Human Resources, of the King City Joint Union High School District (District).

2. Respondents are certificated employees of the District.

3. On March 2, 2009,<sup>2</sup> the Board of Trustees of the District adopted Resolution No. 13:08/09, in which the Board resolved to reduce or discontinue the following particular kinds of services (PKS) for the 2009-2010 school year and directed Superintendent Tom Michaelson to send notice to certificated employees that their services would be terminated at the end of the 2008-2009 school year:

English Teacher	2.0
Math Teacher	2.0
Social Studies Teacher	2.0
Physical Education Teacher	2.0
Business Teacher	1.0
Agriculture Teacher	1.0
Foreign Language Teacher	1.0
Visual Arts Teacher	1.0
Home Economics Teacher	1.0
Counselor	<u>2.0</u>

Total Full-Time Equivalent Reductions: 15.0

4. The reason for the Board’s action was the District’s financial condition—it is experiencing a negative cash flow. The District is currently operating under the oversight of the Monterey County Office of Education. Although a bill is currently before the state legislature that would authorize emergency funding, the District must plan for a significant reduction in services for the next school year. Given all of the circumstances, the decision to reduce or discontinue the identified services was neither arbitrary nor capricious.

5. On March 9 the Superintendent gave written notice to Respondents that it had been recommended that notice be given them that their services would not be required for the

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<sup>2</sup> All dates are in 2009 unless stated otherwise.

2009-2010 school year. All of the Respondents filed timely requests for hearing and notices of defense. All jurisdictional requirements of Education Code sections 44949 and 44955 have been met.

### *Skipping Issues*

6. A district may deviate from terminating employees in strict seniority order if it demonstrates a specific need to retain junior employees possessing training or experience that more senior employees do not have. (Ed. Code, § 44955, subd. (d).) Accordingly, at the March 2 meeting at which the Board adopted the PKS resolution, it also adopted Resolution No. 14:08/09:

For the 2009-2010 school year only . . . the Board of Trustees determines the needs of the District and the students by establishing the following skipping criteria:

- A. Individuals fully-credentialed to serve in special education assignments
- B. Individuals with a single subject mathematics credential
- C. Individuals with a single subject science credential
- D. Individuals with a clear English Learner authorization or having met the requirements for the renewal of an Emergency CLAD.

7. The District presented evidence of a specific need for teachers as described by the skipping criteria as to mathematics. A multi-subject credential allows a teacher to teach kindergarten through ninth grade. A math supplement allows the holder of this credential to teach lower level high school math (basic math, pre-algebra, algebra, and geometry) only. In order to teach algebra II and calculus, a teacher must hold a single subject mathematics credential. Williams testified that there is a “dearth” of teachers with single subject math credentials. As the District plans to reduce math by two FTE positions, it can reasonably be inferred that the District has a special need for teachers who can teach all levels of math.

8. Respondent Jennifer Beach holds a multi-subject credential with a math supplement and has been successfully teaching lower level math classes at the high school level in the District for seven years. She has been noticed for layoff and there are teachers with less seniority being retained. The teachers to be retained hold single-subject math credentials. It is determined that those teachers are properly skipped and that Beach may be laid off despite her seniority.

9. Respondent Lorena Caulk holds a multiple subject credential and a BCLAD<sup>3</sup> certificate. She is one of two teachers in the District with a BCLAD. She teaches English

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<sup>3</sup> Bilingual, Cross-Cultural, Language and Academic Development.

Language Development and uses Spanish as well as English every day. Caulk contends that she should be skipped pursuant to criterion D.

The District did not skip Caulk, nor was there evidence presented that any other teacher was skipped pursuant to criterion D. The fact that a skipping criterion has been established does not require the District to utilize it.

### *Tiebreaking*

10. On March 2 the Board also adopted Resolution No. 12:08/09, which established tiebreaking criteria to be used to determine the order of termination of employees having the same seniority date. In the tiebreaking process, employees are accorded points in seven specified criteria. If ties remain after seven criteria are applied, an eighth criterion is used. If ties remain after eight criteria are applied, a ninth criterion is used. If after applying all nine criteria a tie remains, the tie is broken by use of a lottery.

11. At the time of the hearing, two Respondents were tied, as the tiebreaking criteria had not yet been applied. During a break, Williams applied the criteria and it was determined that Respondent Maria Villagomez was entitled to precede Respondent Amy Campbell on the District's Seniority List. Villagomez and Campbell agreed that the criteria were correctly applied.

### *Attrition Considerations*

12. Prior to issuing the Resolutions referenced herein, the Board was provided with a list of five teachers who would not be returning for the 2009-2010 school year. The proposed reductions were recommended to the Board with this information in mind. Thus, it is found that prior to issuing preliminary notices, all positively assured attrition was considered.

### *Other Issues*

13. 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. All notices and other requirements of Education Code sections 44949 and 44955 have been provided as required. The District has therefore established jurisdiction for this proceeding as to all Respondents.

2. Education Code section 44955 allows a school district to deviate from seniority order in terminating a certificated employee when:

the district demonstrated a specific need for personnel to teach a specific course or course of study . . . and that the certificated employee has special training or experience necessary to teach that course or course of study . . . which others with more seniority do not possess.

As set forth in Findings 6 through 8, cause was established that the preference given to teachers who hold a single subject math credential was warranted. Accordingly, the District may exempt from layoff teachers who hold such credentials and who are junior to Respondents.

3. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees in 15 full-time equivalent positions due to the reduction and discontinuation of particular kinds of services. The decisions made relate solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

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

#### ORDER

Notice may be given to Respondents in 15 full-time equivalent positions 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: \_\_\_\_\_

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MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings

## **APPENDIX A - LIST OF RESPONDENTS**

1. Jennifer Beach
2. Lindsay Buckner
3. Amy Campbell
4. Lorena Caulk
5. Araceli Correa
6. Raymond Green
7. Katie Greenberg-Trujillo
8. Christopher Hanson
9. Melvia Kuchta
10. Justin McCullum
11. Oscar Mendez
12. Susan Nino
13. Chris Norris
14. David Scarborough
15. Norman Silva
16. Lacey Tankersley
17. Jaime Vasquez
18. Maria Villagomez