

BEFORE THE GOVERNING BOARD OF THE
LOS BANOS UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Employment Status of:

DANA ARAMBEL, et al.,

Respondents.

OAH No. 2009031357

KASSIE SNOWDEN,

Precautionary Respondent.

PROPOSED DECISION

This matter was heard before Administrative Law Judge Dian M. Vorters, State of California, Office of Administrative Hearings, on April 16, 2009, in Los Banos, California.

Todd A. Goluba, Attorney at Law,¹ represented the complainant, Dr. Steve Tietjen, Superintendent, Los Banos Unified School District.

Ernest H. Tuttle, III, Attorney at Law,² represented the respondents. There are ten respondents who requested a hearing and returned a Notice of Defense. (See Exhibit A)

The matter was submitted on April 16, 2009.

FACTUAL FINDINGS

General Findings Concerning Statutory Requirements

1. Respondents are certificated district employees.
2. Not later than March 15, 2009, the superintendent of the school district caused the governing board of the district and respondents to be notified in writing of his

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recommendation that notice be given respondents, pursuant to Education Code sections 44949 and 44955,³ that the district would not require their services for the 2009-2010 school year. The notice stated the reasons for the recommendation. In recommending reductions in certificated staff, the superintendent considered the district's declining student enrollment and the qualified condition of the district's budget. The recommendation was not related to respondents' competency.

3. On March 13, 2009, a notice was delivered to each respondent, either by personal delivery or by depositing the notice in the United States mail, registered, postage prepaid, and addressed to each respondent's last known address.

4. The notice advised each respondent of the following: He or she had a right to a hearing. In order to obtain a hearing, he or she had to deliver a request for a hearing in writing to the person sending the notice. The request had to be delivered by a specified date, which was a date that was not less than seven days after the notice of termination was served.⁴ And the failure to request a hearing would constitute a waiver of the right to a hearing.

5. Respondents timely filed written requests for a hearing to determine whether there was cause for not reemploying them for the ensuing year. An accusation was timely served on respondents. Respondents were given notice that, if they were going to request a hearing, they were required to file a notice of defense within five days after being served with the accusation.⁵ Respondents filed timely notices of defense. All prehearing jurisdictional requirements were met.

6. The governing board of the district resolved to reduce or discontinue particular kinds of services. Within the meaning of Code section 44955, the services are "particular kinds of services" that can be reduced or discontinued. The decision to reduce or discontinue these services was not arbitrary or capricious, but constituted a proper exercise of discretion.

Services the District Intends to Reduce or Discontinue

7. The governing board of the district determined that, because particular kinds of services are to be reduced or discontinued, it is necessary to decrease the number of permanent employees in the district by 11 full time equivalents (FTE). The service

³ All references to the Code are to the Education Code unless otherwise specified.

⁴ Employees must be given at least seven days in which to file a request for a hearing. Education Code section 44949, subdivision (b), provides that the final date for filing a request for a hearing "shall not be less than seven days after the date on which the notice is served upon the employee."

⁵ Pursuant to Government Code section 11506, a party on whom an accusation is served must file a notice of defense in order to obtain a hearing. Education Code section 44949, subdivision (c)(1), provides that, in teacher termination cases, the notice of defense must be filed within five days after service of the accusation.

reductions were passed by the governing board in Layoff Resolution No. 07-09, on March 12, 2009.

8. The particular kinds of services the governing board of the district resolved to reduce or discontinue are:

High School Classroom Teaching Positions	
Business	1.00 FTE
Home Economics	1.00 FTE
Middle School Classroom Teaching Positions	
Multiple Subjects - Grades 7-8	3.00 FTE
Elementary Classroom Teaching Positions	
Multiple Subjects - Grades K-6	6.00 FTE
Total:	11.00 FTE

Findings Regarding Noticing

9. The district mailed thirteen (13) initial notices of layoff to teachers, eleven (11) Standard Layoff Notices and two (2) Precautionary Layoff Notices.

10. Complainant noted that two of the eleven (11) teachers who were served with a Standard Layoff Notice did not request a hearing and, therefore, are not respondents in this matter. Those two teachers are Desiree Castellanos and David Kimball.

11. On March 13, 2009, the district served Precautionary Layoff Notices on two additional teachers, Kassie Snowden and Elizabeth Kissel. These precautionary notices contained all of the same information as in the regular layoff notices, but were served as a “precaution in case the District’s analysis is determined to be incorrect.” One of the two teachers who were served with a Precautionary Layoff Notice did not request a hearing and, therefore, was not a respondent in this matter. That teacher is Elizabeth Kissel.

12. Veronica Seimeller received a Standard Layoff Notice, timely requested a hearing, and was served with the accusation packet. However, Ms. Seimeller did not return a Notice of Defense. Complainant affirmatively waived any objection to Ms. Seimeller’s failure to return a Notice of Defense and she is a respondent in this matter.

13. Complainant noted that Audrey Rola was served with notice of layoff in error and that she should not be given a final layoff notice. Ms. Rola’s seniority and qualifications allow her to bump a less senior employee as set forth in Factual Finding 35.

Use of Tie-Breaking Criteria Based on the Current Needs of the District and Students

14. Pursuant to Code section 44955, subdivision (b), the governing board of the district established criteria for determining the order of termination as among employees who first rendered paid service on the same day. The tie-breaking criteria were established by and between the Los Banos Unified School District and the Los Banos Teachers Association and set forth in a Memorandum of Understanding (MOU), signed December 8, 2008, by Mr. Tietjen, District Superintendent and Cheryl Moody, President of the Los Banos Teachers Association. The MOU states:

The parties have met and agreed that the following provisions will be in place to establish a Los Banos Unified School District seniority list for certificated employees in the event of a Reduction in Force (RIF):

1. Education Code 44845 states seniority is the first date of paid service or work, and the District seniority list will be determined by this date.
2. In the event of certificated employees who have the same date of hire, the date the employee initially signed their contract with the District will be used to establish seniority.
3. A lottery will be used to break the tie when certificated employees have the same contract signing date.
4. The Association president or designee will act as an observer to the lottery process.

15. Respondents Audrey Rola and Jennifer Smith first rendered paid service on July 2, 2008. Both respondents signed their district contracts on May 27, 2008. When the district applied the tie-breaking criteria by implementation of a lottery, Ms. Rola's name was drawn first. Accordingly, she is senior to Ms. Smith.

16. Respondents Desiree Castellanos and Leann Purser first rendered paid service on July 2, 2008. Both respondents signed their district contracts on May 30, 2008. When the district applied the tie-breaking criteria by implementation of a lottery, Ms. Castellano's name was drawn first. Accordingly, she is senior to Ms. Purser.

17. Respondents Veronica Siemiller and Megan Landon first rendered paid service on July 2, 2008. Both respondents signed their district contracts on June 27, 2008. When the district applied the tie-breaking criteria by implementation of a lottery, Ms. Siemiller's name was drawn first. Accordingly, she is senior to Ms. Landon.

18. Shanna Spiva, the district administrator for human resources noted that the district has in the past used the contract signing date to determine who to relocate to another site within the district, in the event of class size fluctuation reductions. In those instances, the least senior teacher is moved to another school or site. The employees union agreed in the MOU that having a single seniority list in the event of an RIF, whether arising out of class size fluctuations or teacher layoffs, was fair and provided due notice to teaching staff. The district was justified in relying on the signed agreement and participation of the teacher's union in the implementation of the lottery for tie-breaking purposes.

19. Application of the tie-breaking criteria outlined in the MOU resulted in determining the order of termination solely on the basis of the needs of the district and the students thereof. The benefit to the district and students of maintaining a single seniority list is that it allows the human resources department to operate efficiently, communicate reliably and consistently to employees, and reduce confusion and moral issues which can negatively influence educational quality.

Positively Assured Attrition

20. As set forth in the Layoff Resolution No. 07-09, the governing board "considered all positively assured attrition including all deaths, resignations, retirements, non-reelections, and other permanent vacancies for 2009-2010 and, but for attrition already assured, the Governing Board would have found it necessary to reduce additional services."

21. After the Board issued the above referenced layoff resolution, signed March 13, 2009, an administrator and a high school English teacher, Frank Stone, submitted their resignations to the district. The district does not currently intend to replace the English teaching position made vacant by Mr. Stone's leaving. These two classes of employee were not identified or included as part of the particular kinds of services to be reduced or discontinued for the 2009-2010 school year. Hence, the vacancies are not relevant to respondents' employment status.

22. As set forth in the Layoff Resolution No. 12-09, the governing board voted to end the services of those individuals "who are temporary or probationary certificated employees employed in the district's Crossroads Independent Study Alternative School Program who are not fully credentialed for their current assignment or who are employed in a temporary capacity pursuant to Education Code section 24216.5, and to not reelect each employee for the next succeeding school year in any certificated position within this district pursuant to Education Code section 44949.21(b) or 44954." As such, six employees who were either temporary employees or held provisional certificates or emergency credentials were non-re-elected.

Teachers Holding District Intern or University Intern Credentials and Who Occupy Positions for Which Respondents are Competent and Credentialed

23. Complainant noted that some employees classified as interns were retained over employees who have preliminary credentials, to teach at the elementary grade levels. A variety of interns are employed by the district to work with particular programs such as special education, the “impact program” through the Stanislaus County Office of Education, and university interns. The district properly considered these interns to be probationary employees. No intern was retained to provide services for the particular types of service slated for reduction, who had less seniority than another probationary employee.

24. Education Code section 44885.5, specifically requires school districts to classify as probationary employees, “any person employed as a district intern” or who has “completed service in the district as a district intern” and is “reelected for the next succeeding school year to a position requiring certification qualifications.” Their probationary status affords district interns the same layoff rights of all probationary employees. (*California Teachers Assoc. v. Vallejo City Unified School District* (2007) 149 Cal.App.4th 135, 147.) An employee who holds a university internship credential is treated the same as one holding a district internship credential for purposes of layoff rights and noticing. (*People v. San Diego* (2006) 138 Cal.App.4th 463, 470-472.) The relevant considerations in implementation of teacher layoffs are classification and seniority, not credential status. (*Vallejo, supra.* at p. 156; *Bakersfield Elementary Teachers Assoc. v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1301.)

Individual Bumping/Skipping/Seniority Issues - Elementary

25. Skipping describes the process by which the district may deviate from the order of seniority when there is an identified need for a particular type of service, there is a junior employee who is uniquely qualified to provide that service or teach a subject, and there is no senior employee who is certificated and competent to provide the service. Complainant noted that no skipping was employed by the district for the 2009-2010 school year.

26. Bumping describes the process by which the district identifies those employees who are more senior and who are competent to perform a particular kind of service or teach a particular subject. The two factors used by the district in making bumping determinations were credentials (entitling the employee to actually teach a particular subject) and experience (determined by whether the employee has taught the particular subject within the last five years/not grade level specific). Complainant employed bumping to achieve a proper list of employees to receive layoff notices.

27. The governing board in Resolution No. 07-09 determined it was necessary to reduce six full-time equivalent Elementary Classroom Teaching Positions. The six elementary teachers properly identified to receive final layoff notices are:

- Carole Kruger
- Veronica Siemiller
- Leann Purser
- Desiree Castellanos
- Danielle Avila
- Dana Arambel

The District implemented the reduction of six Kindergarten through sixth grade (K-6) elementary teachers by first looking at the seniority chart and identifying which employees held a multiple subject credential. Of the least senior teachers who hold multiple subject credentials, bumping was employed as follows:

28. *Megan Landon.* Ms. Landon's district start date is July 2, 2008. She taught third grade during the 2008-2009 school year. She holds a preliminary multiple subject certificate and supplemental credentials in English and Social Science. She is qualified to teach K-6 and High School English and Social Science. Carole Kruger's district start date is August 6, 2008. She taught High School English during the 2008-2009 school year and holds a preliminary single subject certificate in English. Ms. Landon's seniority and qualifications allow her to bump Ms. Kruger in the High School English department.

29. *Veronica Seimiller.* Ms. Seimiller's district start date is July 2, 2008. She taught second grade during the 2008-2009 school year. She holds a preliminary multiple subject certificate and no supplemental credentials.

30. *Leann Purser.* Ms. Purser's district start date is July 2, 2008. She taught fifth grade during the 2008-2009 school year. She holds a preliminary multiple subject certificate and no supplemental credentials.

31. *Desiree Castellanos.* Ms. Castellanos' district start date is July 2, 2008. She taught second grade during the 2008-2009 school year. She holds a preliminary multiple subject certificate and a supplemental credential in Geography. However, there was no less senior employee in the district teaching geography for Ms. Castellanos to bump.

32. *Danielle Avila.* Ms. Avila's district start date is July 2, 2008. She taught sixth grade during the 2008-2009 school year. She holds a preliminary multiple subject certificate and no supplemental credentials.

33. *Dana Arambel.* Ms. Arambel's district start date is July 2, 2008. She taught kindergarten during the 2008-2009 school year. She holds a preliminary multiple subject certificate and no supplemental credentials.

Individual Bumping/Skipping/Seniority Issues - Secondary

34. The Governing Board in Resolution No. 07-09 determined it was necessary to reduce three full time equivalent Middle School Classroom Teaching Positions. The Middle School consists of grades seven and eight. The three Middle School teachers properly identified to receive final layoff notices are:

- Kassie Snowden
- Jennifer Smith
- Nadia Hanna

The District implemented the reduction of three Middle School teachers by first looking at the seniority chart and identifying which employees taught core subjects (such as English, Mathematics, Social Science) at the Junior High School level, in self-contained classrooms. Of the least senior teachers who hold either multiple and single subject credentials, bumping was employed as follows:

35. *Audrey Rola.* Ms. Rola's district start date is July 2, 2008. She taught core subjects in a self-contained classroom at the Junior High School during the 2008-2009 school year. She holds a clear multiple subject certificate and a supplemental credential in English. She is qualified to teach K-6 and English at the K-9 level. After the district served Ms. Rola with a layoff notice, it received competent documentation establishing her supplemental English credential. Kassie Snowden's district start date is August 6, 2008. She taught High School English during the 2008-2009 school year and holds a preliminary single subject certificate in English. Ms. Rola's seniority and qualifications allow her to bump Ms. Snowden in the High School English department.

36. *Lorena Sanchez.* Ms. Sanchez's district start date is July 9, 2007. She taught core subjects in self-contained classroom at the Junior High School during the 2008-2009 school year. She holds a multiple subject certificate and no supplemental credential. She is qualified to teach at the middle and elementary school levels. The district determined she was eligible to bump a less senior employee at the elementary school. Jennifer Smith's district start date is July 2, 2008. She taught first grade during the 2008-2009 school year, holds a multiple subject certificate, and no supplemental credentials. Ms. Sanchez's seniority and qualifications allow her to bump Ms. Smith in the elementary school.

37. *Cristina Saileanu-Tuckness.* Ms. Tuckness's district start date is July 5, 2006. She taught core subjects in a self-contained classroom at the Junior High School during the 2008-2009 school year. She holds a clear multiple subject certificate and no supplemental credentials. The district determined she was eligible to bump a less senior employee at the elementary school. Nadia Hanna's district start date is November 19, 2007. She taught second grade during the 2008-2009 school year, holds a multiple subject certificate, and no supplemental credentials. Ms. Tuckness's seniority and qualifications allow her to bump Ms. Hanna in the elementary school.

Individual Bumping/Skipping/Seniority Issues – High School

38. The Governing Board in Resolution No. 07-09 determined it was necessary to reduce two full time equivalent High School Classroom Teaching Positions, one in Home Economics and one in Business. The two High School teachers properly identified to receive final layoff notices are:

- Leigh Wolfsen
- David Kimball

39. *Kristine Mergan*. Ms. Mergan's district start date is August 8, 2006. She taught Home Economics at the Junior High School during the 2008-2009 school year. She holds a multiple subject certificate and a single subject certificate in Home Economics. Ms. Mergan previously taught third and fourth grades school at a private school. The district determined she was eligible to bump a less senior employee at the elementary school. Leigh Wolfsen's district start date is July 2, 2008. She taught Kindergarten during the 2008-2009 school year, holds a multiple subject credential, and no supplemental credentials. Ms. Mergan's seniority and qualifications allow her to bump Ms. Wolfsen in the elementary school.

40. *David Kimball*. Mr. Kimball's district start date is October 10, 1997. He taught Business during the 2008-2009 school year. He holds a single subject certificate in Business. He received timely notice of layoff and did not request a hearing in the matter. Hence, he is not a respondent in this proceeding.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists pursuant to Education Code sections 44949 and 44955. All notices and jurisdictional prerequisites required by those sections were satisfied.

2. The services the district seeks to eliminate in this matter, as set forth in Layoff Resolution 07-09, are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper exercise of the Board's discretion. Pursuant to Education Code sections 44949 and 44955, legal cause exists for the district to reduce or discontinue the particular kinds of services set forth in the layoff resolution. The reduction or discontinuance of these identified particular kinds of services relates solely to the welfare of the district and its pupils.

3. No certificated employee with less seniority than any respondent is being retained to render a service that any respondent is certificated and competent to render.

Legal cause exists pursuant to Education Code sections 44949 and 44955 to give respondents, with the exception of Audrey Rola who was served notice of layoff in error (Factual Findings 13 and 35), final notice that their services will not be required for 2009-2010 school year.

RECOMMENDATION

1. The Los Banos Unified School District's action to reduce or eliminate the particular kinds of services identified in Layoff Resolution 07-09, for the 20098-2010 school year is AFFIRMED.

2. The Accusation against respondents is SUSTAINED. The Los Banos Unified School District may give final notices to respondents, with the exception of Audrey Rola pursuant to Legal Conclusion 3, that their services will not be required for the 2009-2010 school year. Notices shall be given in inverse order of seniority.

DATED: April 28, 2009

DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A
LOS BANOS UNIFIED SCHOOL DISTRICT
Respondent Teachers (Requested a Hearing/Returned a Notice of Defense)

1	Arambel	Dana	served standard layoff notice
2	Avila	Danielle	served standard layoff notice
3	Hanna	Nadia	served standard layoff notice
4	Kruger	Carole	served standard layoff notice
5	Purser	Leann	served standard layoff notice
6	Rola	Audrey	*served layoff notice in error
7	Siemiller	Veronica	served standard layoff notice
8	Smith	Jennifer	served standard layoff notice
9	Snowden	Kassie	served precautionary layoff notice
10	Wolfsen	Leigh Ann	served standard layoff notice