BEFORE THE
GOVERNING BOARD
MONTECITO UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against: RON ZECHER, a Certificated Employee of the Montecito Union School District, Respondent.	OAH Case No. 2009040030

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge, on April 20, 2009, at Santa Barbara. Complainant Richard R. Douglas, Superintendent of the Montecito Union School District, was represented by Pilar Morin, Attorney at Law. Respondent Ron Zecher was present and represented by Adam A. Acevedo, Attorney at Law.

Oral, documentary, and stipulated evidence and arguments having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on April 2, 2009, the Accusation was made and filed by Richard R. Douglas in his official capacity as Superintendent of the Montecito Union School District, County of Santa Barbara, State of California (District).

2. The District is an elementary school district located in Santa Barbara County. Respondent is a permanent certificated employee of the District.

3. (A) On February 17, 2009, the Governing Board of the District adopted Resolution No. 08/09-07 and thereby determined that it must reduce or discontinue certificated services as follows: elementary teachers by 6.0 full-time equivalent (FTE) positions, part-time (0.75 FTE) music teacher by 75 percent, and English Learner (EL) teacher by 0.20 FTE. The Governing Board determined that it is in the best interests of the District to reduce or discontinue the appropriate number of certificated employees and that, due to this reduction or discontinuance of particular kinds of services, the legal number of

certificated employees under Education Code section 44955 must not be re-employed for the 2009-2010 school year.[1] The Governing Board directed the Superintendent to give "Notice of Recommendation Not to Re-employ" in accordance with sections 44944 and 44955 and to the number of certificated employees allowable pursuant to section 44955.

(B) On February 17, 2009, in Resolution No. 08/09-05, the Governing Board adopted tiebreaking criteria to be used in determining the order of termination or layoff of certificated employees who first rendered paid service to the District on the same date or have the same seniority date. In addition, in Resolution No. 08/09-06, the Governing Board adopted criteria to determine competency of any certificated "employee who seeks to move into a position requiring certification qualifications held by a less senior certificated employee."

4. On or about February 20, 2009, pursuant to the Resolution of the Governing Board, the Superintendent timely served respondent by certified mail with a "Notice of Recommendation not to Re-employ," notifying respondent of the recommendation that his services as a part-time music teacher will be reduced for the ensuing 2009-2010 school year. The notice included copies of Education Code sections 44949 and 44955 and a blank Request for Hearing form.

5. On or about March 4, 2009, respondent timely filed a Request for Hearing to determine if there is cause for not re-employing him for the ensuing school year.

6. On or about April 2, 2009, the District timely served respondent with a Notice of Accusation, Accusation, copies of Government Code sections 11507.5-11507.7 and 11506, and a blank Notice of Defense form. The District also included the resolutions of the Governing Board with the Accusation.

7. On or about April 3, 2009, respondent timely submitted a Notice of Defense to the District, acknowledging receipt of the Accusation and requesting a hearing. On or about April 6, 2009, the District properly served respondent with a Notice of Hearing for this matter.

8. The District's preliminary notice of layoff dated March 3, 2009, was sufficient in providing notice to respondents and other certificated employees under Education Code sections 44949 and 44955. Respondent and other certificated employees were not prejudiced by errors in the notice, if any, with respect to the description of their employment status, home addresses, or any other matters. No claims were raised in the hearing that the notice was, in fact, deficient in any respect.

9. All prehearing and jurisdictional requirements under the Education Code and Government Code have been met by the parties. Jurisdiction exists in this matter. The Seniority List of certificated employees (Exh. 7) prepared by the District on or about

[1] All section references are to the Education Code, unless indicated otherwise.

February 3, 2009, is accurate and complete. The position of respondent on the Seniority List is therefore accurate and correct and respondent has not raised any issue with respect to the Seniority List. Nor did respondent raise any argument or claims that the District applied the tie-breaking criteria in incorrect manner or did not account for positively assured attrition among certificated staff for the next school year.

10. The services set forth in Finding 3(A) above are particular kinds of services performed by certificated employees of the District which may be reduced or discontinued within the meaning of section 44955. The determination of the Governing Board to reduce or discontinue these services is within its sound discretion and is not arbitrary or capricious. The District demonstrated that the reduction or discontinuance of these particular kinds of services is related to the welfare of the District and its pupils.

11. Respondent Ron Zecher is a permanent certificated employee who rendered first paid service to the District on December 11, 2001. He is a part-time music teacher in a 0.75 FTE position. He holds a multiple subject credential and a CLAD authorization. In this proceeding, respondent contends that, because he holds a CLAD, he should be able to bump Maria Kalin, a less certificated employee who teaches English Learners and was given a layoff notice. With a CLAD, respondent Zecher is certificated and competent to be an EL teacher, as established by the testimony of the school principal.

12. (A) Maria Kalin is a permanent certificated employee who rendered first paid service to the District on July 1, 2002. As such, Kalin is junior to respondent Zecher in terms of seniority with the District. She holds single subject credentials in Spanish and English and a CLAD authorization and works as a Spanish teacher and EL teacher at the District's elementary school. Kalin is employed in a full-time position which is comprised of a 0.80 FTE position as a Spanish teacher and a 0.20 FTE position as an EL teacher.

(B) On or about February 20, 2009, Kalin was timely given a "Notice of Recommendation Not to Re-employ" due to the reduction of the particular kind of service for English Learner teacher by 0.20 FTE. She did not request a hearing and was not served with an accusation.[2]

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[2] Before the Governing Board adopted the resolution to reduce or discontinue particular kinds of services, the District was aware that respondent has bumping rights into Kalin's 0.20 FTE position as an EL teacher and recommended to the Governing Board the reduction of her 0.20 FTE EL position.

(C) On an undetermined date, the District determined to skip Kalin for reduction by 0.20 FTE of the particular kinds of service in EL teaching purportedly due to application of competency criteria (See Exh. 8).[3] It was not established that the District gave a layoff notice to any other EL teacher or intends to not re-employ another EL teacher for the ensuing school year. The Seniority List shows that Kalin is the only EL teacher in the District.[4]

13. (A) In addition to her Spanish credential and CLAD, Kalin is fluent in Spanish and has a number of years experience teaching in the EL program. Currently, she teaches English Learner students in small pull-out groups to help develop their English language skills and vocabulary. Kalin also works with individual students to address not only their English language needs but also their changes for academic success by supervising their assignments, activities, and playtime. She also follows the progress of the students as they advance in grade levels. Kalin teaches Spanish to elementary students by visiting different classrooms at the elementary school during the school day. In prior school years, Kalin had her own classroom when the school had more English Learner students and the school had extra classroom space. As such, Kalin not only has a credential in Spanish but also unique and specialized skills and experience in the EL program that make her a valuable asset to the District, which helps to explain why the District needs her services and skipped her in the layoff process.

(B) On the other hand, it was not established that respondent Zecher is fluent or can speak Spanish, has a Spanish credential, or, more importantly, has any prior experience teaching in the English Learner program. Under the competency criteria of Resolution No. 08/09-06, respondent Zecher is less competent than Kalin to be able to move or bump into her position to teach in the English Learner program. Accordingly, the District's application of the competency criteria to deny bumping for Zecher is reasonable, in the best interests of the students, and not arbitrary or capricious. Respondent Zecher may not bump into Kalin's 0.2 FTE position as an EL teacher as a matter of both application of the

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[3] By its own terms, the competency criteria set forth in Exhibit 8 is to be applied in cases of bumping and not skipping. Education Code section 44955, subdivision (d)(1), however, provides that a school district may skip or retain an employee holding a special credential or needed skill. Complainant's counsel also noted that the District withdrew the layoff notice issued to Kalin on publication of the decision in *Hildebrandt et al. v. St. Helena Unified School District* (2009), 172 Cal App. 4th 334. In *Hildebrandt*, the First District Court of Appeal held that, in a layoff of certificated employees under section 44955, part-time employees are not entitled to bump or displace a full-time employee with lesser seniority.

[4] Complainant's counsel asserted that the Governing Board had resolved to withdraw the 0.20 FTE reduction of EL teacher but such resolution or decision was not established by any evidence.

competency criteria and the recent court holding in *Hildebrandt et al. v. St. Helena Unified School District* (2009), 172 Cal App. 4th 334.

(C) However, because Zecher cannot bump Kalin and the District has decided to skip Kalin pursuant to a reasonable exercise of its discretion under Education Code section 44955, subdivision (d)(1), there is a certificated employee with less seniority, Kalin, who is being retained by the District to provide services that respondent is certificated and competent to render (EL teacher). As such, respondent Zecher may not be given notice that his services are being reduced and not needed for the ensuing school year.

14. The District may take action against any certificated employee, if any, who was duly served with preliminary notices of layoff but then did not request a hearing, pursuant to Education Code sections 44944 and 44955.

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Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Jurisdiction exists for the current reduction in force proceedings pursuant to Education Code sections 44949 and 44955, based on Findings 1 – 10 above. All notices, accusations, and other related papers and reports required by these Education Code sections have been provided in timely manner and, as such, the parties have complied with the statutory requirements.

2. Cause exists pursuant to Education Code sections 44949 and 44955 to reduce the concomitant number of certificated employees of the Department due to the reduction or discontinuance of particular kinds of services, as set forth in Findings 1 – 10 above. With respect to those certificated employees who received notices but did not request a hearing, the causes set forth in the Accusations relate solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. Cause does not exist, however, pursuant to Education Code sections 44949 and 44955 to reduce or discontinue the part-time employment or services, i.e. music teacher, of respondent Ronald Zecher due to the reduction or discontinuance of particular kinds of services, based on Findings 11 – 13 above. The evidence demonstrated that there is a certificated employee with less seniority than respondent Zecher who is being retained by the District for the 2009-2010 school year to render English Learner services which respondent Zecher is certificated and competent to render.

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WHEREFORE, the Administrative Law Judge makes the following Order:

ORDER

1. The Accusation issued against respondent Ron Zecher must be dismissed, based on Conclusion of Law 3 above. Respondent Zecher may not be given notice that his services will be reduced or will not be required for the 2009-2010 school year.

2. The Montecito Union School District may give notice in inverse order of seniority to those certificated employees, and each of them, who received notices but did not file requests for hearing, that their services will not be required for the ensuing 2009-2010 school year because of the reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955, based on Conclusions of Law 1 and 2 above.

3. Before giving notice to certificated employees, the District shall determine and take into account any additional positively assured attrition among certificated employees in deciding how many and when certificated employees should be terminated before the ensuing 2009-2010 school year.

Dated:

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings