

**BEFORE THE GOVERNING BOARD
OF THE GLENDORA UNIFIED SCHOOL DISTRICT**

In the Matter of the Reduction in Force of
Certain Certificated Employees of the
Glendora Unified School District,

Respondents.

OAH Case No. 2011030082

PROPOSED DECISION

The hearing in the above-captioned matter was held on April 20, 2011, at Glendora, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided. Complainant was represented by Joyce E. Paul, Parker & Covert, Inc. Henry M. Willis, Schwartz, Steinsapir, Dohrmann & Sommers LLP, represented the Respondents.

Oral and documentary evidence was received at the hearing, but the matter was continued until April 27, 2011, so that counsel could submit briefs. Complainant's Letter Brief was timely received and is marked as Exhibit 20 for identification. Respondents' Post Hearing Brief was also timely received, and is identified as Exhibit C.¹

The matter was submitted for decision on April 27, 2011. The Administrative Law Judge hereby makes his factual findings, legal conclusions, and orders, as follow.

FACTUAL FINDINGS

1. Complainant Dominic J. DiGrazia filed the Accusations² in this proceeding in his official capacity as Director of Personnel for the Glendora Unified School District (District).

2. The following persons are certificated employees of the District, and are hereafter referred to as Respondents: Steven Blades, Lori Boyer, Kristen Carrigan, Jessica Crespo,

¹ The Parties' written stipulation will be marked as Exhibit B for identification.

² The term "accusation" refers to a type of pleading utilized under the Administrative Procedure Act, Government Code sections 11500 and 11503, which provides the procedural framework for hearings of this type. It should be made clear that the Respondents are not "accused" in the every-day sense of that word; they have done nothing wrong. Instead, it might be said that they are accused of not having enough seniority or qualifications to retain their positions with the District in the face of a resolution to reduce positions.

Jeffrey Dubransky, Lori Dubrowsky, Kristy Espino, Lisann Francisco, Jennifer Frary, Douglas Granquist, Faith Grant, Lisa Harwick, Mari Helm, Lisa Herrera, Claravern Interlicchia, Amy Kassotis, Pam King, Maureen Kobly, Catherine Lindahl, Russell Longo, Rachel Mandala, Rhonda McComas, Katherine Novak, Arti Patel, Jodi Peralta,³ Michelle Regstad, Christian Rivas, Rebecca Rodriguez, Ruth Younger, and Darin Zabel.

3. (A) On February 28, 2011, the Governing Board (Board) of the District adopted Resolution Number 15, entitled “Reduction Regarding Layoff of Certificated Employees Due to Reduction In Or Discontinuance of Particular Kinds of Services” (Reduction Resolution). The purpose of the Reduction Resolution was to reduce and discontinue particular kinds of certificated services at the close of the 2010-2011 school year. Specifically, the resolution requires the reductions of 24.5 “FTE”—Full Time Equivalent—by reducing various types of services.

(B) The FTE’s that the Board determined to reduce are described in the Reduction Resolution, as follows:

Multiple Subject Classroom Positions Kindergarten Through Grade Six	9.0 FTE
AVID	1.0 FTE
Counselor	1.0 FTE
English	2.0 FTE
Math	2.0 FTE
Music—Elementary	1.0 FTE
Physical Education	1.0 FTE
Reading and/or Math Intervention—Elementary	2.5 FTE
Social Science	2.0 FTE
Adult Education—Off-Site Instructional Positions	3.0 FTE
Total FTE To Be Reduced:	24.5 FTE

(C) However, by reassignment of staff, the District was able to avoid the need to discontinue the AVID, Elementary Music, and Reading and/or Math Intervention positions, so that the FTE to be reduced has declined since the Reduction Resolution was passed from 24.5 FTE to 20.5 FTE.

³ Joan Peralta is listed as a person served with a Preliminary Notice in Exhibit 2, and identified with that name in Exhibit A. However, the Seniority List (Ex. 5) and the Lay Off Worksheet, Exhibit 8, refer to Jodi Peralta, who was the subject of testimony. Both persons work at Stanton Elementary, according to Exhibits 2, 5, and 8. Based on the foregoing, it is assumed that Joan and Jodi Peralta are the same person, and that Exhibit 2 contains a typographical error, picked up by Respondent’s attorney in Exhibit A.

4. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.⁴

5. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District's discretion given uncertainty regarding the state budget and the District's financial resources. Extensive testimony and documentary evidence established that the District faces a significant budget deficit for the 2011-2012 school year unless expenditures are reduced. It was noted that other steps to reduce expenditures had been undertaken, such as allowing attrition in administrative positions, and release of temporary employees.

6. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board. No legally-mandated services will be reduced as a result of the planned reduction or discontinuance of services.

7. On March 14, 2011, the Board, in its Resolution number 17, adopted tie-breaker criteria, to be used in the event that one or more teachers shared the same first date of paid probationary service. The criteria meet the particular needs of the District, and look to matters such as (but not limited to) credentials, years of teaching in the District, and whether the teacher holds advanced degrees. Points are allocated based on the criteria, the teacher with the highest points being the most senior of those otherwise holding the same seniority date. Any ties remaining after the application of the tie-breaking criteria would be resolved by comparing the social security number of the teachers' social security numbers; specifically, comparing the last four digits. The teacher with the lowest number would be most senior.

8. (A) On or about March 4, 2011, each Respondent was given written notice that pursuant to Education Code sections 44949 and 44955, their services would not be required in the 2011-2012 school year (hereafter Preliminary Notices). The District issued 30 such notices, to more persons than it actually needs to lay off. It did that so it would have flexibility in the event some discrepancy arose in the lay-off process, such as an incorrect seniority date or failure of notice. The recipients were notified that they would waive their right to a hearing if they did not request one in a timely manner.

9. (A) Twenty-two of the persons served with a Preliminary Notice requested a hearing, and on or about March 23, 2011, each was served with an accusation and other documents, including a blank notice of defense. Thereafter, those persons filed a notice of defense.

(B) Eight of the persons served with Preliminary Notices did not request a hearing. At the outset of the hearing, Respondents' counsel made a motion to allow those

⁴ All further statutory references are to the Education Code.

persons to be Respondents in the case, because they had been part of a joint notice of defense filed by Respondents' counsel. There being no opposition, that motion was granted.

10. In the course of the reduction in force process, the District created a seniority list. That seniority list took into account a number of factors, the primary factor being each certificated employee's first date of paid service. However, other factors, such as credential types, and current assignment, were set forth on the seniority list.

11. The District retained two junior employees to teach in positions for which those junior employees had special credential, qualification, or experience, and where the District had a need for such teachers. The two junior teachers who were skipped are Claire Interlicchia and Jodi Peralta. No issue was raised as to the propriety of skipping Ms. Interlicchia, but objection was raised to skipping Ms. Peralta.

12. (A) Ms. Peralta is currently the home school teacher. Her seniority date is August 27, 2007, and she is 50 per cent tenured. She holds a Clear Multiple Subject credential. The evidence established that Ms. Peralta is has been responsible for providing education through the home school program, a type of alternative education, for four years. She was described as the first and only home school teacher in the District. Along with Dr. Mary Suzuki, Ms. Peralta developed and built the program, to where some 17 students participate in it.

(B) Not only must a home school teacher have the credential to teach children from grades K to 8, he or she must have the skill and training to do so in the alternative setting. It is inferred from the testimony that such a teacher must be very organized to succeed, and Ms. Peralta has been very successful. Furthermore, such a teacher must be able to interact with the students' parents on a routine basis, in a positive way. It is reasonably inferred that the parent interaction occurs much more frequently than occurs for the average elementary school teacher. Ms. Peralta is able to do so in a positive way, as evidenced by the fact that some parents have expressed to Dr. Suzuki their feeling that they would not continue in the District's program if Peralta was not the teacher.⁵

(C) Ms. Peralta has had special training in all the requirements that are imposed on such independent study programs; she has had three years of such training. The training is provided by the California Consortium of Independent Study Conference. It is clear from the record that operation of the home school program requires an understanding of the regulatory and record-keeping requirements imposed by law; there are numerous compliance issues to be mindful of.

⁵ The record indicates that such parents could obtain the service from a local charter school if they did not obtain it from the District. Obviously, every such child retained in the District provides revenue for the District, an economic reality that can not be ignored by a school district in these times.

(D) Some of Ms. Peralta's training has been "on the job" with Dr. Suzuki. The latter testified that in her current position, she would be unable to train a replacement for Ms. Peralta, in part because the administrative staff in her current department has been halved, and she has lost clerical support. Dr. Suzuki believes that if Ms. Peralta were lost as an employee of the District, the program might be terminated.

13. One teacher, Ms. Catherine Lindahl asserts that she is competent and qualified to teach in the home school program. Given that she is senior to Ms. Peralta—Lindahl's seniority date is September 2, 2003—she might well be able to teach in the home school program. Ms. Lindahl also holds a multiple subject credential, and she has years of experience teaching, in the District and in other school districts as well. She taught two years of junior high school at another district, and then at that district she taught in first and second grade class rooms. Since coming to the District, she has taught first grade and kindergarten. It is inferred that she has approximately 20 years of teaching experience. Ms. Lindahl does not have any experience in teaching in a home school program, and has no training pertaining to such a position.

14. (A) One teacher, Ms. Maureen Kobly, objected to her seniority date, which is September 1, 2004. She has taught in the District long before that date. However, at the end of the 2003-2004 school year she resigned from the District, to take a job in another district, because she had moved. She was with that district for approximately six to eight weeks when she concluded that the new position was not a good fit for her. She contacted her former principal, who was quite willing to have come back to her old job site, so she spoke to Ms. Nichols, who was in the District administration, then Assistant Superintendent for Curriculum.⁶

(B) Respondent attested that Ms. Nichols told her that if she returned to work for the District, it would be like she never left. Ms. Kobly then gave up her position with the other school system, and came back to work for the District.

(C) Ms. Kobly also asserted she could teach in the home school program, as she holds a multi subject credential, and has taught third and fourth graders in the District, and had sixth graders during her short tenure with the other district.

15. During the hearing, no Respondent other than Respondents Lindahl and Kobly offered evidence that they could bump a more junior employee from their position or that an employee had been improperly skipped. Likewise, no Respondent other than Kobly adduced evidence that they were given a wrong seniority date. No Respondent asserted that the tie-break criteria was not properly utilized, nor did they provide any other evidence that might show why they should not be laid off.

⁶ Ms. Kobly could not recall Ms. Nichols exact title, but the District's brief provides her title.

16. In making its Reduction Resolution the Board took into account attrition known to it prior to the date of the Reduction Resolution. However, after the Resolution was adopted, it learned of three more retirements, which it took into account in determining who will ultimately be laid off. (Compare Ex. 17 with Ex. 8.) Thus, 17 FTE must still be reduced.

17. Except as may be determined below, no certificated employee junior to any Respondent was retained by the District to render a service for which a Respondent was certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to sections 44949 and 44955, based on Factual Findings 1 through 9.

2. (A) A District may reduce a particular kind of services (PKS) within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.) The Court of Appeal has made clear that a PKS reduction does not have to lead to less classrooms or classes; laying off some teachers amounts to a proper reduction. (*Zalec v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 853-85; see also *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631, 637 [reduction of classroom teaching can be a reduction of a PKS; as long as there is a change in the method of teaching or in a particular kind of service in teaching a particular subject; any amount in excess of the statutory minimum may be reduced]; *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32.)

(B) The services to be discontinued are particular kinds of services within the meaning of section 44955. The Board’s decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. This Conclusion is based on Factual Findings 3 through 6, and the foregoing authorities.

3. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) No Respondent established that they had the right to bump a junior employee, based on the foregoing rules, and Factual Findings 15 and 17.

4. Junior teachers may be given retention priority over senior teachers—may be “skipped”—if the junior teacher possesses superior skills or capabilities not possessed by

their more senior colleagues, and the district demonstrates a specific need for personnel to teach a specific course or course of study. (§ 44955, subd. (d)(1); *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Bd. of Santa Clara Unified School Dist.* (1981) 116 Cal.App.3d 831.)

5. The District properly skipped Ms. Peralta, based on Legal Conclusion 4 and Factual Findings 12(A) through 12(D). Although Respondents argue that her training is in the more administrative or compliance aspects of her job, and does not pertain to teaching, that is not a sufficient objection. It appears from the evidence that the two are inextricably intertwined; she must know the compliance issues so that her teaching is shaped to meet those compliance mandates. It is reasonably clear that teaching home school in the District is the teaching of a specific course or course of study, and that Ms. Peralta has not only the special training, but the experience necessary to teach that special course of study. While it appears that Ms. Lindahl would be a good candidate to train for such a position, in the event it opened up (or if the home school expanded so that a second teacher was needed) it can not be found or concluded that she has, at this time, the training or the experience necessary for that assignment. Ms. Kobly has less experience than Ms. Lindahl, and cannot establish that she has the training and experience necessary for the assignment.

6. (A) Ms. Kobly's seniority date may not be modified, based on Factual Finding 14. The record is clear that she resigned, and then came back to work. When a permanent employee resigns and then returns within 39 months, upon re-hire they are "restore[d] to all of the rights, benefits, and burdens of, a permanent employee, except as otherwise provided in [the Education Code]." (§ 44931.) It is settled, however, that one exception is the old seniority date. Section 44948 makes it clear that the first date of paid service upon rehire becomes the seniority date. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 641.)

(B) Respondent's brief, essentially, argues that *San Jose Teachers Assn, supra*, was wrongly decided, contending, in part, that the 39 month period mentioned in section 44931 is in essence a recognized break in service. However, the statute does not call it that, and no case was cited for that proposition. Thus, it appears that the specific provisions of section 44948 must control over the more general provisions of section 44931, especially when the latter makes reference to possible exceptions. Finally, even if the ALJ agreed that the *San Jose Teachers Assn* decision is incorrect, he does not have the authority to disregard that decision of the Court of Appeal.

(C) Respondent did not provide evidence sufficient to estopp the District from using September 1, 2004 as her seniority date. It is not established that she has been injured to by her reliance on a less-than clear statement. Respondent testified that she was not completely satisfied with her new job. Furthermore, she has not shown injury by her reliance. If she had stayed with her other position, she would have been a probationary employee, and could not have attained tenure until 2006. By returning to the District, she

regained her permanent status, with two more years of seniority than she would have had. It cannot be concluded that she has proven an estoppel.

7. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render, based on all the foregoing.

8. The District may lay off the Respondents, in reverse order of seniority, in order to reduce 17 FTE of services consistent with the Reduction Resolution, based on all the foregoing. Respondent Peralta, having been properly skipped, shall not receive a final lay off notice.

ORDER

The following Respondents may receive final layoff notices in inverse order of seniority: Steven Blades, Lori Boyer, Kristen Carrigan, Jessica Crespo, Jeffrey Dubransky, Lori Dubrowsky, Kristy Espino, Lisann Francisco, Jennifer Frary, Douglas Granquist, Faith Grant, Lisa Harwick, Mari Helm, Lisa Herrera, Claravern Interlicchia, Amy Kassotis, Pam King, Maureen Kobly, Catherine Lindahl, Russell Longo, Rachel Mandala, Rhonda McComas, Katherine Novak, Arti Patel, Michelle Registad, Christian Rivas, Rebecca Rodriguez, Ruth Younger, and Darin Zabel.

May 5, 2011

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings