

BEFORE THE  
GOVERNING BOARD OF THE  
MT. DIABLO UNIFIED SCHOOL DISTRICT

In the Matter of Accusations Against:

The Certificated Employees Identified in  
Attachment A,

Respondents.

OAH No. 2013030153

**PROPOSED DECISION**

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on April 10, 2013, in Concord, California.

Debra A. Cooksey and Latisha McCray, Attorneys at Law, represented the Mt. Diablo Unified School District.

Ernest M. Tuttle, III, Attorney at Law, represented all of the Respondents.

The record closed on April 10, 2013.

**FACTUAL FINDINGS**

1. Steven Lawrence filed the Accusation in his official capacity as Superintendent of the Mt. Diablo Unified School District.

2. Respondents are listed on Attachment A. Each Respondent is a certificated employee of the District.

3. On February 25, 2013, the District's Governing Board adopted Resolution No. 12/13-30, establishing a process for determining seniority among certificated employees with the same seniority date (tiebreaker resolution).

4. On March 11, 2013, the Board adopted Resolution No. 12/13-35, reducing or discontinuing particular kinds of services for the 2013-2014 school year and directing the Superintendent or his designee to give appropriate notices to certificated employees whose positions will be affected by the action. The Resolution was based upon Superintendent Lawrence's report that the reductions were necessary because of the District's projected budget deficits.

5. On or before March 15, 2013, Superintendent Lawrence gave written notice to Respondents of the recommendation that their services will not be required for the 2013-2014 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

6. Respondents filed timely requests for a hearing to determine if there is cause for terminating their services for the 2013-2014 school year. An accusation was served on Respondents, all of whom are deemed to have filed timely notices of defense. All prehearing jurisdictional requirements have been met.

7. On March 11, 2013, the Board took action to reduce or discontinue the following particular kinds of services for the 2013-2014 school year:

<b>District Wide</b>	
Program Specialist, Categorical Programs, Site Based	4.00000 FTE
Coordinator, Student Services 6-8	.60000 FTE
Vice Principal, Middle School	1.00000 FTE
Vocal Music	.20000 FTE
Instrumental Music	.54000 FTE
Library Media Teachers	.60000 FTE
Resource Specialist (SIG Grant)	.11567 FTE
Psychologist (Site Categorical Funds)	2.10000 FTE
<b>Elementary Teaching Positions</b>	
K-5 Classroom Teachers (Multiple Subject – includes SIG positions being eliminated due to end of grant)	27.62800 FTE
Coach (Math, Inquiry, Literacy – Multiple Subject credential – includes SIG)	4.57839 FTE
Intervention (Multiple Subject credential – includes SIG)	9.75737 FTE
ESL (Multiple Subject credential – includes SIG)	3.48800 FTE
EIA (Multiple Subject credential – includes SIG)	1.57000 FTE
Academic Literacy (Multiple Subject credential – includes SIG)	.31000 FTE
EL Support (Multiple Subject credential)	5.13000 FTE
<b>Middle &amp; High School Teaching Positions</b>	
7 <sup>th</sup> English/Social Science Core (Multiple Subject)	.34000 FTE
Reading	1.68460 FTE
Geometry	.80000 FTE
Social Science	2.54000 FTE
PE	1.17000 FTE

Math	3.94000 FTE
7 <sup>th</sup> & 8 <sup>th</sup> Grade Science	1.47000 FTE
English	8.95000 FTE
Algebra	.76000 FTE
Art	1.57000 FTE
Ceramics	.60000 FTE
Hands On Technology (HOT)	.28000 FTE
Leadership	.20000 FTE
Video	.40000 FTE
Foreign Language: Spanish	.40000 FTE
Foreign Language: French	.80000 FTE
Earth Science	1.20000 FTE
Biology	3.40000 FTE
Chemistry	.20000 FTE
Health Science	.20000 FTE
Physics	1.00000 FTE
ESL	1.40000 FTE
<b>Total:</b>	<b>94.92203 FTE</b>

8. Before issuing the preliminary layoff notices, the District took into account all positively assured attrition. The District must issue the final layoff notices before May 15, and when it does so the District will take into account any additional attrition that has occurred.

9. The Parties stipulated that the listed seniority dates of Respondents Martha Boyle and Christina Deasy are incorrect, and that the District will correct the dates when it determines which date in August 2011 is accurate.

*Skipping issue*

10. Resolution No. 12/13-35 contains the following statement:

“Competency” for the purpose of Education Code section 44955 shall be determined solely upon current possession of a preliminary or clear credential for the subject matter or grade level to which the employee will be assigned at the beginning of the 2013-2014 school year.

11. Resolution No. 12/13-35 also states:

There is a direct and specific need within the District for certificated employees qualified to serve the needs of K-12 students with respect to the following:

a. Courses requiring Bilingual Cross-Cultural Language and Development (BCLAD) certificates, which are highly specialized programs requiring the possession and utilization of additional specialized certificates and/or credentials. Teachers must actively be using their BCLAD certification in their assignment to be skipped.

b. Bilingual School Psychologists.

Pursuant to Education Code section 44955(d)(1), it will be necessary to retain the services of certificated employees in the 2013-2013 school year, regardless of seniority, who possess these qualifications as demonstrated by the possession of a valid certificate and/or credential and use of that certificate and/or credential in the employee's 2013-2014 assignment.

12. The District decided to skip for layoff four teachers who hold BCLAD certificates. If that occurs, teachers who are senior to them and also hold BCLAD certificates (Heather Riggs, Eve Lowenstein, Maria Farias and Jessica Mew) will be laid off. In support of this decision, District argued that the more senior teachers are not presently in an assignment where a BCLAD certificate is required. In addition, the District plans to use the skipped teachers in BCLAD-required assignments next year.

13. Other than the planned skip set forth in Finding 12, no certificated employee junior in seniority to any Respondent is being retained by the District to perform services that any Respondent is certificated and competent to render.

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

#### LEGAL CONCLUSIONS

1. Cause exists because of the reduction or elimination of particular kinds of services pursuant to Education Code section 44955 to give notice to Respondents in 94.92203 full-time equivalent positions that their services will not be required for the

2013-2014 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

2. Education Code section 44955, subdivision (b), requires a district to proceed in inverse order of seniority when effectuating an economic layoff. An exception to this provision is contained in Education Code section 44955, subdivision (d)(1), which allows deviation from seniority when:

. . . the district demonstrates 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 or to provide those services . . . which others with more seniority do not possess.

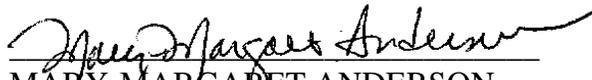
The District did not demonstrate that the proposed skip of the four junior teachers holding BCLAD certificates meets the requirements of Education Code section 44955, subdivision (b). The senior teachers are competent to teach in assignments requiring a BCLAD certificate under the District's defined competency standards. There was no evidence that the junior teachers possess special training and experience that the senior teachers do not. The District's proposed BCLAD skip, as described in Finding 12, is invalid.

#### ORDER

1. Notice may be given to Respondents in 94.92203 FTE positions that their services will not be required for the 2013-2014 school year because of the reduction or elimination of particular kinds of services.

2. Heather Riggs, Eve Lowenstein, Maria Farias and Jessica Mew may not be laid off in favor of Respondents with BCLAD certificates, who have less seniority.

DATED: April 19, 2013

  
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MARY-MARGARET ANDERSON  
Administrative Law Judge  
Office of Administrative Hearings

ATTACHMENT A

Alexanian, Virginia
Anthony, Kenneth
Berson, Eric
Bever, Angela
Boyle, Martha
Brown, Heidi
Busker, Megan
Carder, Sunny
Chavez, Latrina
Contreras, Arieli
Cornish, Jon
Coyle Eisner, Mary
Deasy, Christina
Di Maggio, Sarah
Diebel, Kaitlyn
Dwyer, Kerri
Edwards, Tina
Enos, Charley
Enzweiler, Elizabeth
Faghih, Allison
Farias, Maria
Fashokun, Adeyinka
Feil, Stephany
Fernandez, Robert
Finnegan, Theresa
Foxcroft, Bharbara
Freedman, Ceri
Gayrard, Kimberly
Gemma, Megan
Godinez, William
Godoy, Jennifer
Grass, Jennifer
Haider, Laima
Hartline, Thomas
Hauptert, David
Hickey, Maureen
Higgins, Creston
Hillman, Christina
Holt, Danielle
Hubbell, Andrew
Hudson, Jill

Hults, Cecilia
Kalin, Michael
Ko, Sehoon
Kornfeld, Shay
Latz, Holly
Lee, Benwade
Lowenstein, Eve
Lyon, Courtney
Lyons, Gregory
Mangelsdorf, Elizabeth
Marks, Jeanine
McCormick, Lindsay
McFarlan, Maggie
Mew, Jessica
Miles, David
Moseley, Jane
Motter, Linzey
Nash, Sarah
Navarro, Sheila
Ng, Mary
Nice, Sarah
Nicoll, Marilyn
Parsons, Erin
Perkins, Kirsten
Peters, Eliza
Plotzker, Kevin
Richardson, Ashley
Riggs, Heather
Rodemsky, Linda
Sajjad, Maria
Sanchez, Alicia
Sanchez, Ruth
Scott, Melanie
Smyrl, Laura
Spradley, Tessa
Thomas, Marcus
Thomas, Martha
Vidaurri, Catherine
Walsh, Cheryl
Watson, Marla
Wheeler, Janeen
Zeller, Kari
Zeppegno, Gina