

**BEFORE THE  
GOVERNING BOARD OF THE  
LITTLE LAKE CITY SCHOOL DISTRICT  
STATE OF CALIFORNIA**

**In The Matter Of The Accusation  
Against:**

**CERTIFICATED TEACHERS OF THE  
LITTLE LAKE CITY SCHOOL  
DISTRICT**

**OAH No. 2009030291**

**Respondents.**

**PROPOSED DECISION**

H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 15, 2009, at the Little Lake City School District, Santa Fe Springs, California.

Eric Bathen, Attorney at Law, represented the Little Lake City School District (District).

Carlos R. Perez, Attorney at Law, represented the respondents.

The matter was submitted on April 15, 2009.

**SUMMARY OF PROPOSED DECISION**

The Governing Board of the Little Lake City School District (Board) determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

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District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, "bumping," and breaking ties between employees with the same first dates of paid service. The selection process was in accordance with the requirements of the Education Code.

### **FACTUAL FINDINGS**

1. Phillip Perez, Ed.D., is the Superintendent of the District.

2. On or before March 15, 2009, the District served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and, by enclosure of Board Resolution 09-055, noted that the Board had passed a Resolution reducing the certificated staff by 28.6 full time equivalent (FTE) positions.

3. Notice was served by certified mail, return receipt requested. Certificated employees timely requested, in writing, a hearing to determine if there is cause for not reemploying them for the ensuing school year.

4. The Superintendent made and filed Accusations against each of the certificated employees who requested a hearing. The Accusations, with required accompanying documents and blank Notices of Defense, were timely served on those certificated employees.

5. Timely Notices of Defense were filed by or on behalf of the respondents.

6. Respondents in this proceeding are probationary or permanent certificated employees of the District.

7. On or before March 10, 2009, the Governing Board of the District was given notice of the Superintendent's recommendation that 28.6 FTE employees be given notice that their services would not be required for the next school year and stating valid reasons for that recommendation.

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8. Board Resolution No. 09-055, adopted on March 10, 2009, proposed a layoff of 28.6 FTE certificated employees. Specifically, Board Resolution 09-055 provided for the reduction or elimination of the following particular kinds of services:

<u>SERVICES</u>	<u>NUMBER OF FULL TIME EQUIVALENT POSITIONS</u>
Multiple Subject Credentialed Teachers	20.0
Elementary Music Teachers	2.0
Middle School Social Science Teacher	1.0
Middle School Language Arts Teacher	2.0
Middle School Math Teacher	1.0
Middle School AVID Support	0.4
Middle School Literacy Coach	0.8
Special Education (RSP) Teacher	<u>1.0</u>

**Total Full Time Equivalent Reduction: 28.6**

9. Subsequent to adoption of the Board’s Resolution, the District identified vacancies in School Year 2009-2010 due to retirements, release of temporary teachers, and resignations. In consideration of such attrition, the District concluded that the number of certificated employees required to be terminated pursuant to this proceeding is 26.6 FTE.

10. Board Resolution 09-047 established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination shall be based on the needs of the District and its students in accordance with the following:

4. As between certificated employees with a professional clear or preliminary credential (or equivalent) possessing the same seniority date, the following criteria shall be utilized to resolve ties between employees having the same seniority date in priority order:
  - a. Meet the criteria to be NCLB Compliant for current assignment
  - b. Possession of a Bilingual Cross-Cultural Language Academic Development (BCLAD) Certificate (or equivalent)
  - c. Possession of a Cross-Cultural Language Academic Development (CLAD) Certificate (or equivalent)
  - d. Issuance of a Temporary County Certificate (TCC) for a BCLAD or CLAD (or equivalent)
  - e. Hold credential for the longest period of time
  - f. Total number of years of teaching experience in the District
  - g. Total number of years of teaching experience in education

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5. As between certificated employees with an internship credential (or equivalent) who have no seniority date, the following criteria shall be utilized to resolve ties between employees having no seniority date in priority order:

- a. Meet the criteria to be NCLB Compliant for current assignment
- b. Issuance of a Temporary County Certificate (TCC) for a credential with a BCLAD or CLAD authorization (or equivalent)
- c. Issuance of a Temporary County Certificate (TCC) for a credential
- d. Earliest District hire date.
- e. Total number of years of teaching experience in the District
- f. Total number of years of teaching experience in education

6. As between certificated employees with a waiver or emergency credential who have no seniority date, the following criteria shall be utilized to resolve ties between employees having no seniority date in priority order:

- a. Issuance of a Temporary County Certificate (TCC) for a credential with a BCLAD or CLAD authorization (or equivalent)
- b. Issuance of a Temporary County Certificate (TCC) for a credential
- c. Earliest District hire date
- d. Total number of years of teaching experience in the District
- e. Total number of years of teaching experience in education

11. The District maintains a Seniority List which contains employees' seniority dates (first date of paid service), current assignments and locations, advanced degrees, credentials, and authorizations. Credential and authorization data are obtained from the records of the County Office of Education, at which certificated employees must register such documents. Respondents did not challenge the accuracy of the Seniority List.

12. The District used the Seniority List to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other employees.

13. The District used information from the District's Seniority List to apply the tie-breaker criteria of Board Resolution No. 09-047.

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## LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The services identified in Board Resolution 09-055 are particular kinds of services that could be reduced or discontinued under Education Code 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 Education Code section 44949.

3. A District may reduce services 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.)

4. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

5. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

6. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent 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.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

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## **ORDER**

1. The Accusations against the respondents are sustained. Notice may be given to the respondents that their services will not be required for the 2009-2010 school year because of reduction or discontinuance of particular kinds of services.
2. Notice shall be given in inverse order of seniority.

DATED: April 22, 2009

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H. STUART WAXMAN  
Administrative Law Judge  
Office of Administrative Hearings