

BEFORE THE  
GOVERNING BOARD OF THE  
SAUGUS UNION SCHOOL DISTRICT  
STATE OF CALIFORNIA

In The Matter Of The Accusation Against:

JENNIFER BORDER and Other  
Certificated Employees of the  
Saugus Union School District,

Respondents.

OAH No. 2009030582

**PROPOSED DECISION**

Michael A. Scarlett, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 20, 2009, at the Saugus Union School District, Santa Clarita, California.

James Baca, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, represented the Saugus Union School District (District). Richard Grove, Assistant Superintendent for the District and Jill Golberg, Director of Personnel, were also present at the hearing.

Robert Bartosh and Jeffery Stinnett, Attorneys at Law, Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez, a Professional Corporation, represented Respondents Jennifer Border, Michele Boron, Kirsten Chapman, Carrie Ferrone, Michelle Green, Brooke Griffiths, Jill Jones, Catherine Maness, Melissa Marcucilli, Katherine Mitchell, Jamie Pawlak, Lauren Piper, Monica Smith, Natalie Swisher, Nancy Tomei, Melissa Valencia, and Courtney Von Buelow (hereinafter Respondents).

Prior to the start of the hearing, the District rescinded its notices of non-reemployment and dismissed the Accusations against Respondents: Karen Bowcott, Cheryl Cameron, Emily Cook, Scott Cusack, Karen Field, Lynn Greenfield, Elizabeth Johnson, Nicole Knox, Abigail Peak, Sandra Piatt, Amber Reynolds, Haylee Richardson, Cynthia Ritter, Scott Ritter, Brynn Rooney, Brooke Volkmann, and Kristen Weirich. At hearing, the District rescinded the notice of non-reemployment and dismissed the Accusation against Stephanie Cruz.

Oral and documentary evidence was received and the matter was submitted on April 21, 2009.

## SUMMARY OF PROPOSED DECISION

The Governing Board of the Saugus Union School District determined to reduce or discontinue particular kinds of services provided by general education certificated teachers 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.

District staff carried out the Board's decision by using a selection process involving the review of credentials and seniority, bumping and skipping if applicable, 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. The Saugus Union School District (District) operates 15 elementary schools (K-6) with approximately 11,000 students.
2. Dr. Judy Fish is the Superintendent of the District (hereinafter Superintendent).
3. On March 6, 2009, the Governing Board of the District was given notice of the Superintendent's recommendation that 35 Full Time Equivalent (FTE) General Education Teachers be given notice that their services would not be required for the next school year and stating the reasons for that recommendation.
4. Board Resolution No. 2009-8, adopted on March 10, 2009, proposed a layoff of 35 FTE certificated employees. Specifically, Board Resolution No. 2009-8 provided for the reduction or elimination of the following particular kinds of services:

General Education Teachers – 35 FTE
5. On March 11, 2009, the District served on each Respondent personally, and by certified and first class mail, 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 noted that the Board had passed a Resolution reducing the General Education Teachers by 35 FTE positions. All 35 certificated employees timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.
6. On April 6, 2009, the Superintendent made and filed Accusations against each of the certificated employees who requested a hearing. The Accusations were timely served

on the certificated employees with Accusation packets that included the required accompanying documents and blank Notices of Defense.

7. Respondents' counsel filed a timely joint notice of defense on April 10, 2009, for 35 certificated employees who had all timely requested hearings.

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

9. The services set forth in Factual Findings 3 and 4 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.<sup>1</sup>

10. The Governing Board took action to reduce or discontinue the services set forth in Factual Finding 4 primarily because of the unprecedented budget crisis facing the State of California, and the anticipated shortfall in revenue compared to expenses for the upcoming fiscal and school year. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

11. The reduction of services set forth in factual finding numbers 3 and 4 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 Governing Board.

12. Subsequent to adoption of the Board's Resolution, the District identified vacancies in School Year 2009-2010 due to anticipated and actual attrition of certificated employees. In consideration of such attrition, on April 16, 2009, the District issued Rescission of Notice and Dismissal of Accusation letters to 17 certificated employees.<sup>2</sup> On April 21, 2009, at hearing, the District stipulated on the record that it had rescinded notice and dismissed the accusation against previously noticed certificated employee, Stephanie Cruz.<sup>3</sup> Accordingly, the District determined that the number of certificated employees required to be terminated pursuant to this proceeding is 17 FTEs.

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<sup>1</sup> All further references are to the Education Code.

<sup>2</sup> On April 20, 2009, the District served the rescission of notice and dismissal of accusation letters on the following certificated employees: Karen Bowcott, Cheryl Cameron, Emily Cook, Scott Cusack, Karen Field, Lynn Greenfield, Elizabeth Johnson, Nicole Knox, Abigail Peak, Sandra Piatt, Amber Reynolds, Haylee Richardson, Cynthia Ritter, Scott Ritter, Brynn Rooney, Brooke Volkmann, and Kristen Weirich.

<sup>3</sup> At hearing, the District reviewed the tie breaking criteria as it applied to Stephanie Cruz and discovered that Ms. Cruz had satisfied additional criteria which impacted her position on the seniority list and necessitated the rescission of notice and dismissal of Accusation against this Respondent.

13. Board Resolution No. 2009-10, adopted on March 10, 2009, established the 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 criteria listed in priority order pursuant to Resolution No. 2009-10: (1) English Language Learners (ELL) authorization; (2) verified years or fraction of a year of regular District service in other positions; (3) Master's Degree from an accredited institution of higher education; (4) systematic English Language Development (ELD) training; (5) completion of SB 472 and AB 466 training; (6) completion of 18 hours of Gifted and Talented Education (GATE) training; (7) prior service as a District Learning Specialist (LT) or Head Teacher (HT); and (8) assuming that all ties between employees having the same seniority date are not resolved, then seniority order is determined by lot.

14. 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.

15. Richard Grove, the Assistant Superintendent of the District, was responsible for implementation of the technical aspects of the layoff. Careful evaluation of each employee's seniority date, credential, and qualifications preceded the determination of what bumping rights, if any, an employee had. Adjustments were made to the seniority list where indicated. To assure the accuracy of seniority dates and other data affected employees, verification letters were sent to all Respondents. The District's verification letter requested the Respondent's to verify the accuracy of the first date of paid service and the credentials held which were included in the Seniority List. District staff also met as a group with all of the affected employees to verify and confirm the District's records of their first dates of paid service and credentials. The District made the Seniority List available to employees and confirmed the accuracy of the Seniority List with the certificated employees who were noticed. No certificated employee challenged the accuracy of or validity of the District's Seniority List.<sup>4</sup>

16. The District used information from the District's Seniority List to apply the tie-breaker criteria of Board Resolution No. 2009-10, and previously listed in Paragraph 10 above. The District properly applied and implemented the tie breaking criteria in order of

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<sup>4</sup> The District recommended to the Board a reduction in the particular kinds of services rendered by general education teachers. No other position or services were recommended for reduction or discontinuation. The District's seniority list shows several positions held by administrators, counselors, special education teachers, SLP, APE, and RSP teachers, who have less seniority than some of the general education teachers included in the lay off notice. However, no Respondent claimed any "bumping" rights as to any of these positions, or challenged the Board's discretion to not include these positions in Resolution No. 2008-09.

priority pursuant to Resolution No. 2009-10 until all ties were broken.<sup>5</sup> The District's application of the tie breaking criteria and procedure was not challenged or contested at hearing by Respondents.

17. All of the Respondents subject to the layoff were general education teachers. Respondents Jamie Pawlak and Natalie Swisher have the same seniority date of August 1, 2006, and are permanent teachers. Both Pawlak and Swisher have multiple subject credentials and both satisfied two of the tie breaking criteria contained in Board Resolution No. 2009-10: ELL authorization and GATE training. Respondent Michelle Green has a seniority date of August 10, 2006, is a permanent teacher, and has a multiple subject credential. Green satisfied three of the tie breaking criteria: ELL authorization, ELD training, and GATE training. Respondent Melissa Valencia has a seniority date of October 18, 2006, is a permanent teacher, and has a multiple subject credential. Valencia satisfied two of the tie breaking criteria: ELL authorization and ELD training. Respondent Carrie Ferrone has a seniority date of November 1, 2008, is a permanent teacher and has a Ryan Professional Clear Multiple Subject credential with no Cross-cultural Language & Academic Development (CLAD). Ferrone satisfied three tie breaking criteria: ELL authorization, prior District service, and has a Masters Degree.

18. Respondents Courtney Von Buelow, Nancy Tomie, Kirsten Chapman, Melissa Marcucilli, Katherine Mitchell, Jill Jones, Jennifer Border, Lauren Piper and Monica Smith, all have the same seniority date of August 1, 2007, and all are probationary teachers. Von Buelow has a multiple subject credential, and satisfied four of the tie breaking criteria: ELL authorization, prior District service, ELD training, and GATE training. Tomie has a Ryan Clear Professional Multiple Subject credential and a regular CLAD certificate, and satisfied four tie breaking criteria: ELL authorization has a Master Degree, ELD training, and SB 472 reading staff development. Chapman has a Ryan Clear Multiple Subject credential and a regular CLAD certificate, and has satisfied three of the tie breaking criteria: ELL authorization has a Masters Degree, and GATE training. Marcucilli has a Ryan Multiple Subject credential and has satisfied two tiebreaking criteria: ELL authorization and Masters Degree. Mitchell has a Ryan Clear Multiple Subject credential with a CLAD, and has satisfied three tie breaking criteria: ELL authorization, ELD training, and GATE training. Jones has a Multiple Subject credential and satisfied two tie breaking criteria: ELL authorization and ELD training. Border has a multiple subject credential and satisfied one tie breaking criteria: ELL authorization. Piper has a multiple subject credential and satisfied one tie breaking criteria: ELL authorization. Smith has a Ryan Professional Clear Multiple Subject credential and a CLAD, and satisfied one tie breaking criteria: ELL authorization.

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<sup>5</sup> Application of the tie breaking criteria to the Seniority List resulted in some employees with the same seniority date, or first paid date of service, being "tied" on the seniority lists. These employees were indicated as being in "lots" on the Seniority List. However, certificated employees who were listed within "lots" on the seniority lists were either retained or laid off within their respective lots.

19. Respondent Brooke Griffiths has a seniority date of September 6, 2007, and is a probationary teacher. Griffiths has a multiple subject credential and satisfied one tie breaking criteria: ELL authorization. Respondent Catherine Maness has a seniority date of September 10, 2007, and is a probationary teacher. Maness has a multiple subject credential and satisfied four tie breaking criteria: ELL authorization, prior District service, ELD training, and GATE training.

20. No certificated employee junior to any of the Respondents was retained to render a service which any Respondents are certificated and competent to render.

## 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 2009-8 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.

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.)

3. Cause exists pursuant to sections 44949 and 44955 to reduce the number of certificated employees of the District due to the reduction or discontinuation of particular kinds of services set forth in Factual Findings 3 and 4, as a result in the budget crisis facing the State of California and the District's anticipated revenue shortfall for the 2009-2010 school year, by reason of Factual Findings 1 through 20. The District properly identified the certificated employees providing general education teacher services as the particular kinds of services that the Board directed be reduced or discontinued.

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

5. Cause exists to terminate the services of Respondents Jennifer Border, Michele Boron, Kirsten Chapman, Carrie Ferrone, Michelle Green, Brooke Griffiths, Jill Jones, Catherine Maness, Melissa Marcucilli, Katherine Mitchell, Jamie Pawlak, Lauren Piper, Monica Smith, Natalie Swisher, Nancy Tomei, Melissa Valencia, and Courtney Von Buelow, by reason of Factual Findings 1 through 20, and Legal Conclusions 1 through 4.

## ORDER

1. The Accusation is sustained and the District may notify Respondents Jennifer Border, Michele Boron, Kirsten Chapman, Carrie Ferrone, Michelle Green, Brooke Griffiths, Jill Jones, Catherine Maness, Melissa Marcucilli, Katherine Mitchell, Jamie Pawlak, Lauren Piper, Monica Smith, Natalie Swisher, Nancy Tomei, Melissa Valencia, and Courtney Von Buelow, occupying 17 FTE certificated general education teacher positions that their services will not be needed during the 2009-2010 school year due to the reduction and/or discontinuance of particular kinds of services.

2. Notice shall be given in inverse order of seniority.

Dated: May 5, 2009

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Michael A. Scarlett  
Administrative Law Judge  
Office of Administrative Hearings