

BEFORE THE  
GOVERNING BOARD  
KEPPEL UNION SCHOOL DISTRICT  
COUNTY OF LOS ANGELES  
STATE OF CALIFORNIA

In the Matter of the Layoff of:

Matthew Brockway, and other  
certificated employees of the Keppel  
Union School District,

Respondents.

OAH Case No. L2009030196

**PROPOSED DECISION**

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 13, 2009, in Littlerock, California.

James B. Fernow, Attorney at Law, represented Dr. Linda Wagner, Superintendent of the Keppel Union School District (District).

Richard J. Schwab and Deborah Eshaghian, Attorneys at Law, represented Matthew Brockway (Brockway), Monetta Carter (Carter), Randi Cooper (Cooper), Challen David (David), Timika Emerson (Emerson), Tara Goines (Goines), Ventura Herrera (Herrera), Camille Lynn (Lynn), Lisa Martinez (Martinez), Priscilla Salgado (Salgado), and Gwendolyn Streat (Streat), collectively called Respondents.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2009-2010 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2009-2010 school year.

Prior to the start of the hearing, the District rescinded its notices of non-reemployment issued to, and the Accusation as it pertains to, Respondents Brockway, Carter, Lynn, and Salgado.

Oral and documentary evidence was received at the hearing. The record was left open for the District to submit a reply to the Administrative Law Brief submitted by Respondents. On April 15, 2009, the District's post-trial brief was received, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Superintendent Wagner filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.
3. On February 26, 2009, the Governing Board of the District (Governing Board) adopted Resolution Number 2008-09-010, reducing or discontinuing the following services for the 2009-2010 school year:

<u>Service</u>	<u>FTE<sup>1</sup> Reduction</u>
Elementary School Teacher	28.0
Teacher on Special Assignment Literacy Coach	2.0
Teacher on Special Assignment Instructional Coach	2.0
Teacher on Special Assignment Middle School Instructional Coach	<u>1.0</u>
Total	33.0

4. Superintendent Wagner thereafter provided written notice to the Governing Board and to Respondents that she recommended the termination of Respondents' services for the 2009-2010 school year due to the reduction of particular kinds of services.
5. On March 11 through 13, 2009, the District provided notice to Respondents that their services will not be required for the 2009-2010 school year due to the reduction of particular kinds of services. Respondents filed timely requests for hearing.
6. On March 31, 2009, the District filed and served the Accusation and other required documents on Respondents. Respondents thereafter timely filed notices of defense, seeking a determination of whether cause exists for not reemploying them for the 2009-2010 school year.
7. All prehearing jurisdictional requirements have been met.
8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.<sup>2</sup>

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<sup>1</sup> Full-time equivalent position.

<sup>2</sup> All further references are to the Education Code.

9. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 primarily because of the uncertainty surrounding future funding. The District estimates a revenue shortfall of approximately \$3.5 Million for the remainder of the 2008-2009 school year and for the 2009-2010 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.

10. After the adoption of Resolution 2008-09-010, the District received additional funds and was given additional flexibility to increase class sizes. As a result, the number of positions to be reduced was decreased from 33 to 14.

11. The reduction of services set forth in factual finding numbers 3 and 10 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. In determining the number of final layoff notices to issue, the District expects to take into account any retirements and resignations to reduce the number of actual layoff notices.

13. On February 26, 2009, the Governing Board adopted criteria for breaking seniority ties for employees with the same first date of paid service. The following six criteria were chosen, based on the District's needs for the 2009-2010 school year: number of credentials; number of units beyond BA/BS degree; earned degrees beyond the BA/BS level; authorization for English Language Learners; number of supplemental authorizations; and type of credential(s) held. The criteria were not all equally weighed, and points were awarded for each item. The tie-breaking criteria are reasonable as they relate to the skills and qualifications of certificated employees, and the District properly applied the criteria.

14. The District issued precautionary layoff notices to two junior employees in case their layoff was not sustained at the hearing. The employees, Respondents Goines and Streaan, have the same seniority date of July 30, 2008, and hold clear multiple subject credentials. Respondent Goines has four years of experience, including one at the District, in teaching a gifted student program, known as the Gifted and Talented Education Program, or "GATE." She completed the required 120 hours of work offered by the University of California, San Diego, to obtain GATE certification. The District has 111 students enrolled in the program, and they have specific program needs. Respondent Streaan holds a Bilingual, Crosscultural, Language and Academic Development Certificate (BCLAD), and is teaching English language learners. The District has a significant number of students whose primary language is not English and who need language assistance in order to learn the required subjects, and Respondent Streaan teaches such students. The District has demonstrated a specific need for teachers to provide instruction in the GATE program and to its English language learners. Respondents Goines and Streaan provided the needed services and possess special training and experience to do so, and, therefore, may be retained.

15. Two other Respondents, Emerson and Martinez, share the same seniority date as Respondents Goines and Streaan. Respondent Emerson holds a preliminary multiple subject credential, with authorizations in introduction to science and biological science, and Respondent Martinez holds a clear multiple subject credential. They both hold English Language (EL) authorizations. However, neither employee has the training or experience to teach the GATE students or holds a BCLAD to teach English language learners, which their counterparts possess. While authorized to teach English language learners, Respondents Emerson and Martinez do not possess the level of training of a BCLAD and neither taught English language learners during the 2008-2009 school year. Similarly, while Respondent Martinez has experience in another program designed to teach gifted students, AVID, she does not have the certification or experience to teach the District's GATE program.

16. Respondent Herrera holds a preliminary multiple subject credential with an EL authorization. She contests the August 1, 2008, seniority date assigned to her by the District. She was first hired by the District on October 8, 2007, but resigned one month later to care for her ailing mother. Respondent Herrera attended new employee orientation in the 2007-2008 school year and, a District official, Kathy Sanchez, told her that she did not need to attend the July 30, 2008, orientation. In reliance on Sanchez' representation, and not realizing that it would impact her seniority date, Respondent Herrera did not attend the orientation. Her reliance resulted in the loss of the earlier seniority date, and placement behind the 10 other coworkers who attended the orientation. However, even with the new seniority date Respondent Herrera will not be able to bump any employee with the same or lower seniority. As set forth above, the two employees skipped by the District, Respondents Goines and Streaan, possess special training and experience that qualify them for their positions, training and experience that Respondent Herrera lacks.

17. The District did not retain any certificated employee junior to Respondents Cooper, David, Emerson, Herrera, or Martinez, to render a service which these Respondents are certificated and competent to render.

### LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 8.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 17.

4. The doctrine of equitable estoppel is available in certain circumstances to those who detrimentally rely on representations made by another. In order for equitable estoppel to apply, the following requirements must be met: “(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true facts; and (4) he must rely upon the conduct to his injury.” (*Lentz v. McMahon* (1989) 49 Cal.3d 393, 399, quoting *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.) Although the doctrine should be applied against the government “where justice and right require it,” it cannot be applied against the government where to do so would effectively nullify a “strong rule of policy, adopted for the benefit of the public . . .” (*City of Long Beach v. Mansell, supra*, 3 Cal.3d at p. 493.) Nor can estoppel be applied where to do so would enlarge the power of a governmental agency or expand the authority of a public official. (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 28.)

Respondent Herrera has established the elements of equitable estoppel. Because she had already attended new employee orientation in 2007, District official Sanchez told Respondent Herrera not to attend the July 30, 2008, orientation. Not realizing that failure to attend would adversely impact her seniority and attendant rights, Respondent Herrera did not attend orientation. This reliance resulted in detriment to Respondent Herrera, who is presently behind 10 other employees. Giving Respondent Herrera the correct seniority date of July 30, 2008, does not nullify a strong public policy. On the contrary, justice and right require it. Therefore, the District is estopped from recognizing Respondent Herrera’s correct seniority date of July 30, 2008.

However, despite the new seniority date, no employee junior to Respondent Herrera has been retained to perform a service that she is certificated and competent to render.

5. Cause does not exist to terminate the services of Respondents Goines or Streaun because they possess special training and experience to meet specific needs of the district, by reason of factual finding number 14.

6. Cause exists to terminate the services of Respondents Cooper, David, Emerson, Herrera, and Martinez, by reason of factual finding numbers 1 through 13, and 15 through 17, and legal conclusion numbers 1 through 4.

### ORDER

1. The Accusation is dismissed with respect to Respondents Brockway, Carter, Goines, Lynn, Salgado, and Streaun.

2. The Accusation is sustained with respect to Respondents Cooper, David, Emerson, Herrera, and Martinez, and the District may notify them that their services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services.

DATED: \_\_\_\_\_

SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings