

BEFORE THE  
GOVERNING BOARD  
LUCIA MAR UNIFIED SCHOOL DISTRICT  
COUNTY OF SAN LUIS OBISPO  
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Kristin Ackerman and Other  
Certificated Employees of the  
Lucia Mar Unified School District,

Respondents.

Case No. L2009040035

**PROPOSED DECISION**

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 28, 2009, in Arroyo Grande, California.

Jenell Van Bindsbergen, Attorney at Law, represented Sid Richison (Richison), Assistant Superintendent, Personnel, Lucia Mar Unified School District (District).

Robert Bartosh, Adam Acevedo, and Jeanne Kvale, Attorneys at Law, represented those individual Respondents listed in the Order, with the exception of the self-represented certificated employees of the District listed in the next paragraph.

Jami Adams, Julie Dunahoo, and Bernie Dominguez represented themselves. Self-represented employees Mike Sciocchetti and Jacqueline Kavanaugh filed notices of defense, but did not appear at the hearing. All five individuals are referred to as the self-represented Respondents or, included with those represented by counsel, as Respondents.

The District has decided to reduce or discontinue certain educational services and has given Respondents and other certificated employees of the District 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 2008-2009 school year.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Richison filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. On March 3, 2009, the Governing Board of the District (Governing Board) adopted Resolution number A-0809-13, reducing or discontinuing the following services for the 2009-2010 school year:

<u>Service</u>	<u>FTE<sup>1</sup> Equivalent Positions</u>
Middle School Assistant Principal	3.0
Middle School ASB/Student Governing teacher	0.2
Middle School Drama teacher	0.2
Middle School English Language Development teacher	0.8
Middle School English teacher	0.8
Middle School Music teacher	0.4
Middle School Physical Education teacher	1.6
Middle School Activity Supervision teacher	0.2
Middle School Science teacher	0.4
Middle School Social Studies teacher	0.8
Middle School Spanish teacher	0.4
Middle School Study Skills teacher	0.4
Middle School Opportunity teacher	0.8
High School Area Administrator	4.0
High School Automotive Technology teacher	0.6
High School Agriculture teacher	0.4
High School Art teacher	1.2
High School AVID teacher	0.4
High School Business teacher	1.0
High School Colorguard teacher	0.2
High School Family/Consumer Science teacher	0.8
High School French teacher	0.4
High School Industrial Technology teacher	0.4
High School Music teacher	0.8
High School Physical Education teacher	1.0
High School Science teacher	0.6
High School Social Studies teacher	0.6
Elementary Principal	0.5

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

Elementary Classroom teacher	55.5
Elementary Physical Education teacher	6.5
Elementary Resource teacher	1.5
Elementary School Opportunity teacher	0.8
Elementary Music teacher	1.2
Elementary Itinerant Health/Science teacher	4.0
Director, Elementary Curriculum	1.0
Director, Secondary Curriculum	1.0
Counselor	11.3
School Psychologist	1.0
BTSA Teacher on Special Assignment	2.0
Independent Study teacher	1.3
Technology Teacher on Special Assignment	1.0
School Nurse	2.34
ROP Architectural Design/CAD/Computer Animation teacher	1.0
ROP Engine Diagnosis/Power Train Systems teacher	0.4
ROP Business Applications teacher	0.15
ROP CAD/CAM Engineering teacher	0.2
ROP Color Photo Technology/Professional Imaging teacher	0.8
ROP Construction Technology teacher	0.8
ROP Criminal Justice	0.4
ROP Electronic Media teacher	0.4
ROP Floral Design teacher	0.6
ROP Ornamental Horticulture teacher	0.2
ROP Teaching Careers teacher	0.2
ROP Video Production teacher	0.2
ROP Web Page/Design/Word Processing teacher	0.4
High School English	3.0
High School Math	<u>3.0</u>
Total	125.09

4. On March 11, 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.

5. On March 13, 2009, District Superintendent Erik Howell (Superintendent) notified the Governing Board that he had recommended that notice be provided to 223 certificated employees of the District, including Respondents, that their services will not be required for the 2009-2010 school year due to the reduction of particular kinds of services.

6. Respondents requested a hearing to determine if there is cause for not reemploying them for the 2009-2010 school year. All hearing requests were timely filed.

7. On March 31, 2009, the Superintendent rescinded, and the Governing Board approved the rescission of, 70 layoff notices, and the affected certificated employees were thereafter notified of the rescissions.

8. On or about April 7, 2009, the District issued the Accusation, and served it on Respondents.

9. Respondents thereafter filed timely notices of defense.

10. All prehearing jurisdictional requirements have been met.

11. On April 23, 2009, the District rescinded an additional 10 layoff notices. At the hearing, the parties stipulated that the layoff notice issued to Alejandra Lopez had also been rescinded.

12. 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>

13. The Governing Board took action to reduce the services set forth in factual finding number 3 primarily because of anticipated declines in State funding. The District estimates that it may lose as much as \$9.4 million for 2009-2010 school year. The decision to reduce or discontinue the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

14. The reduction or discontinuance of services set forth in factual finding number 3, in the context of the significant anticipated decline in revenue, 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.

15. On March 3, 2009, the Governing Board adopted Resolution No. A-0809-14, setting forth the criteria to determine seniority among employees who first rendered paid service in a probationary position on the same date (tie-breaking criteria). The criteria are reasonable as they relate to the skills and qualifications of certificated employees, and the District properly applied the criteria.

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

16. Also on March 3, 2009, the Governing Board adopted Resolution No. A-0809-15, setting forth criteria in the event more junior employees had to be retained over more senior employees in order to meet a specific teaching need of the District. As pertinent to this case, the resolution states: “[B]E IT FURTHER RESOLVED that deviation from the layoff or reappointing in order of least seniority can include, but shall not be limited to: ¶¶ . . . ¶¶ Teachers with teaching experience within the subject area of the credential within the past five (5) years. . . .”

17. The District seeks to retain Laurie Alexander-Hills (Alexander-Hills) and Mark Greenelsh (Greenelsh) to continue teaching at Lopez High School, the District’s alternative education or continuation high school. Alexander-Hills’ seniority date is August 20, 2008, and Greenelsh’s is August 17, 2006. Alexander-Hills holds a single subject (physical education) credential, and Greenelsh holds a single subject (English) credential. Christine Granados, the principal at Lopez High School, testified about the distinct and difficult student population at the school. Students there have more academic, social and emotional difficulties than their peers in the traditional high schools. They require alternative and creative teaching approaches, which include structural variations from traditional school, such as shorter periods, school days, and school terms. Teachers at the continuation school, including Alexander-Hills and Greenelsh, attend yearly conferences and participate in ongoing on-the-job training to meet the needs of the students. For instance, some of the topics addressed in the current school year training have involved issues of drug abuse and gang involvement, child development, and social and emotional issues. Alexander-Hills has approximately 17 years of experience teaching in alternative education settings, and Greenelsh has taught at Lopez High School for four years. The two have developed good rapport with the fragile students and sensitivity to their needs. In light of the foregoing, the District has established its special needs for experienced teachers to teach at Lopez High School, and Alexander-Hills and Greenelsh possess the special training and experience to provide the teaching services.

18. Respondent Cynthia Bainbridge has a seniority date of August 23, 2001, and holds a single subject (business) credential. She teaches business and work experience at Nipomo High School and is yearbook advisor at the school. She asserts that she can teach the classes that Greenelsh teaches at Lopez High School. However, Respondent Cynthia Bainbridge has not taught at a continuation school, and does not possess the special training and experience that Greenelsh does to teach at Lopez High School.

19. Respondent Jim Gross teaches physical education (.8 FTE) and ROP Web Page Design (.2 FTE). He disputes his seniority date of August 17, 2006. He was first employed on August 19, 2004, as a temporary employee teaching two ROP Web Page Design classes. He was released at the end of the year and rehired as a temporary employee for the following year. He received temporary employment contracts for each year. Respondent Jim Gross asserts that he should be retained in place of Christina Belo (Belo) by virtue of application of the tie-breaking criteria. Belo has a seniority date of August 19, 2004, holds a single subject (physical

education) credential, and teaches dance. Respondent Jim Gross' argument is unpersuasive. Even if taught more than 75 percent of the school in each of the two years before he became a probationary employee, he would have received probationary employee credit for only one of those years (Ed. Code, § 44918), which would still make him junior to Belo. In addition, Respondent Jim Gross has never taught dance and would not be competent to teach the subject matter under the District's competency criteria.

20. Respondent Julie Dunahoo has a seniority date of November 4, 2004, and holds a pupil personnel services credential. She works as a counselor at Nipomo High School. From 1997 to October 2004, she worked in two classified positions that are now taught by certificated employees of the District, and seeks credit for those years in order to increase her seniority.

21. No certificated employee junior to any Respondent was retained to render a service which any of Respondents is 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 9.

2. The services listed in factual finding number 3 are particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 12.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue 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 21.

4. The Education Code (Code) permits certificated employees to be classified in one of four ways: permanent, probationary, substitute, or temporary. (*Kavanaugh v. West Sonoma County Union High School District* (2003) 29 Cal.4th 911, 916 (*Kavanaugh*)). A certificated employee is classified as permanent, i.e., acquires tenure, if, after having been employed for two complete successive school years in a position requiring certification qualifications, he or she is reelected for the following year. (§ 44929.21, subd. (b); *Bakersfield Elementary Teachers Association v. Bakersfield City School District* (2006) 145 Cal.App.4th 1260, 1278-1279 (*Bakersfield*)). Probationary employees are "those persons employed in positions requiring certification qualifications for the school year, who have not been classified as permanent employees or as substitute employees." (§ 44915.) "[S]ection 44915 has been understood to make probationary status the default classification for certificated employees who are not otherwise required by the Code to be classified as permanent, substitute, or temporary employees. [Citations]." (*Bakersfield, supra*, 145 Cal.App.4th at p. 1281.) Substitutes are "those persons employed in positions requiring certification qualifications, to fill positions of regularly

employed persons absent from service. . . .” (§ 44917.) Temporary employees are those requiring certification qualifications, other than substitute employees, who are employed for limited assignments, as defined in the Code, such as in sections 44918, 44919, 44920, and 44921. (*California Teachers Association v. Vallejo City Unified School District* (2007) 149 Cal.App.4th 135, 146 (*Vallejo*.)

Employment as a substitute or other temporary status may become employment in a probationary capacity in some circumstances. “A year of employment as a temporary teacher may, in some cases, be treated as a year of probationary service for purposes of attaining permanent status if the employee is rehired for the following year ‘as a probationary employee in a position requiring certification qualifications’ (§ 44909); ‘in a position requiring certification qualifications’ (§ 44917); ‘as a probationary employee’ (§ 44918); or ‘in a vacant position requiring certification qualifications’ (§ 44920). . . .” (*Bakersfield, supra*, 145 Cal.App.4th at p. 1279, fn 11.)

Section 44918, subdivision (a), provides: “Any employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following year.”

In Respondent Jim Gross’ case, if he taught more than 75 percent of the school in each of the two years before he became a probationary employee, a fact that was not established at the hearing, he would receive probationary employee credit under section 44918 for the year preceding employment as a probationary employee, which would still make him junior to Belo. In any event, as set forth in factual finding number 19, he is not competent to perform the assignment which Belo is being retained to perform.

5. The seniority date of a certificated employee is defined as the date the employee “first rendered paid service in a probationary capacity.” (§ 44845.) Since Respondent Julie Dunohoo worked in undisputed classified positions prior to November 2004, none of this experience constitutes “probationary” employment in a certificated capacity and may not be credited toward seniority.

6. Cause exists to terminate the services of the Respondents listed in the Order, by reason of factual finding numbers 1 through 21 and legal conclusion numbers 1 through 5.

### ORDER

The Accusation is sustained and the District may notify Respondents Kristin Ackermann, Jami Adams, Kirsten Atkison, Cynthia Bainbridge, Jennifer Blonder, Cynthia

Boatenhamer, Lynda Bowers, Julia Bowles, Matthew Brownlee, Brandi Burnum, Katie Burroughs, Leslie Caillier, Traci Cajas, Mary Jo Cali, Andres Cavazos, Shanna Cerro-Rowland, Eileen Copsey, Amanda Cranford, Stacey David, Philip Deichler, David Dexter, Elizabeth Dickel, Carolyn Dostal, Julie Dunahoo, Eric Dunham, Curt Eichperger, Kristin Ekenstedt, Kristin Eldridge, Julie Elvin, Jean Fiorentino, Randy Fiser, Camala Fowler, Colleen Franco, Heather Friel, Wayne Gamble, Larry Goldzman, Emily Greenslate, Jim Gross, Kristi Hall, Thomas Hall, Katherin Hanson, Rachel Hess, Christina Hickey, Janet Holland, Laurie Ingham, Heather Inglehart, Jacqueline Kavanaugh, Katie Langley, Rex Lanier, Chrystine Lee, Colby Lindeman, Kelly MacDonald, Natalie Manosar, Patricia Marshall, Lacey McCoy, Brooke McMillen, Scott Meenzhuber, Andrea Meenzhuber, Yusdivia Mosqueda, Derek Muetzel, Jennifer Nelson, Laurie Owens, Megan Palange, Cristel Penton, Debra Pitman, Peter Ponomaroff, Brianne Prickett, Erin Pringle, Laura Rasgado, Sean Ricketts, Ryan Ritchie, Lori Ruppert, Cathy Sanford, Callie Schoultz, Elisa Schultz, Mike Sciocchetti, Danielle Seiler, Tristan Shorba, Andrea Sidun, Angela Smith, Connie Sparks, Rena Spooner, Jason Stewart, Lara Storm, Sarah Sue, Anne Sutcliffe, Tabitha Tabarez, Erika Timmer, Crista Tucker, Kelly VanderHamm, Kerry Walton, Lori Wertz, Cheryl Whitford, Erin Wynns, Stephanie Zambo, and Theodore Zamorano 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