

BEFORE THE
GOVERNING BOARD OF THE
WHEATLAND SCHOOL DISTRICT

In The Matter Of The Accusations Against:

MARY JANE BOLIN
AMY CHILDERS
STEVE CHRISTENSEN
CORRINE GARCIA
SUSAN LUND
JOELENE MORASCH
JENNIFER SHUE
KATHLEEN SISK
ADELE WAPPLE

OAH NO. 2009040486

Respondents.

PROPOSED DECISION

Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 14 and 15, 2009, in Wheatland, California.

Paul Nicholas Boylan, Attorney at Law, represented the Wheatland School District.

Carolyn Langenkamp, Attorney at Law, Langenkamp & Curtis, LLP, represented respondents Bolin, Christensen, Shue, Sisk, and Wapple.

Gene R. Morgan, Staff Representative, Emeritus, California Teachers Association, represented respondents Childers, Garcia, Lund, and Morasch.

Evidence was received at the administrative hearing and the record was left open for submission of written argument from the parties no later than noon on May 17, 2009. Written argument was received from all parties and the matter submitted on May 17, 2009. The parties agree that Education Code section 44949, subdivision (e), requires submission of the Proposed Decision to the Governing Board and employees on or before May 20, 2009, and a final decision by the Governing Board on or before May 28, 2009.¹

¹ This matter was continued for good cause, resulting in extending the May 7 and May 15 deadlines for submission of the Proposed Decision and the final decision by the Governing Board by 13 days.

FACTUAL FINDINGS

1. Debra M. Pearson is the Superintendent of the Wheatland School District of Yuba County, State of California, and made and filed this Accusation in her official capacity as a public officer.

2. Each of the respondents was at all times mentioned herein, and now is, a certificated employee of the District.

3. On March 2, 2009, the Governing Board of the Wheatland School District adopted Resolution No. 08/09-16, Resolution No. 08/09-17 and Resolution No. 08-09-19, relative to Reduction in Certificated Staff Due to Reduction or Elimination of Particular Kinds of Certificated Services. The Board directed the Superintendent to give notice to certificated employees that their services will not be needed for the 2009-2010 school year by reason of a reduction or elimination of particular kinds of service.

4. On March 2, 2009, a Notice of Recommendation That Services Will Not Be Required with respect to the 2009-2010 school year was sent to all respondents in the manner prescribed by law and the Board was advised that such notices were sent.

5. Each respondent, within the time limit specified in Education Code section 44949, subdivision (b), requested a hearing to determine if there is cause for not reemploying the respondent for the ensuing school year.²

6. The Governing Board has resolved to suspend class size reduction and reduce other programs and services. More specifically, the Governing Board determined to reduce 23 full time equivalent (FTE) positions in Kindergarten through grade five classroom instruction. The Governing Board also determined to reduce a total of 3.0 FTE in classroom instruction in the middle school by reducing sixth grade language, math, science, language support, and math support by .20 FTE each; seventh grade language and math support by the same .20 FTE; and eighth grade language support, English, language, history, math, science, and math support by the same .20 FTE. The language of Resolution 08-09-16, which included the specific reductions recited also included this language: “[I]t will be necessary to retain the services of certificated employees, regardless of seniority, who possess qualifications needed in the projected educational program for the 2009/2010 school year, which are not possessed by a more senior employees) thereby subjecting the more senior employees) to layoff....”

7. It is the proposed “skipping” to which the quoted language of the resolution refers that defines the sole issue litigated by the parties in this matter. District proposes to skip junior certificated employees holding a Cross-cultural, Language and Academic Development (CLAD) Certificate or the equivalent. However, District has issued

² At the outset of the administrative hearing, the District rescinded some notices, leaving the 9 respondents identified in the caption.

“precautionary” lay off notices to those junior employees to allow for adequate staff reductions if the proposal is determined to be a violation of Education Code section 44955.

8. District’s rationale for skipping is District’s belief that other provisions of the Education Code require that a teacher who provides instruction to even a single English language learner (EL) student³ must possess a CLAD or the equivalent. Failure to comply with this perceived mandate would, in the view of the District, subject it to the risk of civil liability and sanctions by state and federal governmental agencies. These sanctions include the loss of funding.

9. District includes two elementary school sites: Wheatland Elementary School and Lone Tree Elementary School, and one middle school, Bear River Middle School. District intends to close, before the start of school year 2009-2010, another now existing site.

10. Twelve percent of the elementary school students enrolled in the District this school year (2008-2009) are EL. There are 15 ELs at Lone Tree Elementary School out of a total enrollment of 377 students. There are 82 ELs enrolled at Wheatland Elementary School out of a total enrollment of 431 students. All of the teachers at Wheatland Elementary School have a CLAD Certificate or the equivalent. Of the teachers at Lone Tree Elementary School, 55.5 percent have a CLAD Certificate or equivalent. One of two Kindergarten teachers has a CLAD Certificate or equivalent; one of two first grade teachers has a CLAD Certificate or equivalent; the single second grade teacher (respondent Sisk) does not have a CLAD Certificate or equivalent; one of two third grade teachers has a CLAD Certificate or equivalent; and the single teacher in each of the fourth and fifth grades has a CLAD Certificate or equivalent.

11. Among the 16 teachers tentatively assigned to the Bear Creek Middle School next school year, eight do not have CLAD Certificate or the equivalent. Superintendent explained that after providing sufficient staffing for special education students, she looked at teaching requirements for the middle school. She first tentatively placed teachers with the appropriate credentials in middle school slots and filled the remaining few positions with teachers holding Multi-Subject credentials and a CLAD Certificate. She was left with 28 projected elementary school teaching positions and five more teachers than needed. As noted above, the Superintendent prefers to retain more junior teachers with a CLAD Certificate, Childers, Garcia, Lund and Morasch. This would result in notice to more senior teachers, Bolin, Christensen, Shue, Sisk, and Wapple.

³ Education Code section 305, subdivision (a), reads: “‘English learner’ means a child who does not speak English or whose native language is not English and who is not currently able to perform ordinary classroom work in English, also known as a Limited English Proficiency or LEP child.”

Senior Employees Without CLAD Certificate or Equivalent

12. Steve Christensen is the ninth most senior certificated district employee with a seniority date of November 28, 1983. He has taught grades three through eight. His current assignment is sixth grade math and science and one period of seventh grade pre-algebra. He does not possess a CLAD Certificate or the equivalent. He has begun the process of obtaining a CLAD Certificate, having completed the first course and having begun the second. He will complete the necessary prerequisites for the certificate at the end of September, 2009. District did not tell Mr. Christensen at any time before issuance of his lay-off notice that he needed a CLAD Certificate. Once Mr. Christensen learned that he was to be laid off because he did not possess a CLAD Certificate, he wrote the Superintendent asking her to submit a Certificate of Need to the California Commission on Teacher Credentialing (CTC) or to the Yuba County Superintendent of Schools. This would, as explained below, allow either entity to issue Mr. Christensen an emergency waiver for one year to allow for his acquisition of the CLAD Certificate. The Superintendent did not respond to his request. At hearing, the Superintendent explained that she did not support the issuance of emergency waivers because, in substance, they were simply “pieces of paper” which did not equate to the training required to acquire the certificate. The Superintendent did authorize an emergency waiver when District learned Mr. Christensen’s instruction to seventh graders in pre-Algebra this year was beyond his credential. Mr. Christensen had not specifically requested the waiver.

13. Mary Jean Bolin is a third grade teacher with a seniority date of September 28, 1993. She teaches third grade at Lone Tree Elementary School. She does not possess a CLAD Certificate or the equivalent. She was never told by District that she had to have such a certificate to keep her job, although she was told that she could be reassigned without it. This occurred in 2000, when she was moved from Wheatland Elementary School to her current site. Two others were moved to Lone Tree under the same circumstances. In the spring of 2007, Ms. Bolin learned that the District would pay for classes leading to a CLAD or equivalent certificate. She signed up for classes provided by San Joaquin Office of Education and conducted at the Marysville School District office. She took a total of eight classes in the fall of 2007. Ms. Bolin did not receive a certificate, because she did not submit her portfolio as required and also did not retake an examination on which she had one wrong answer, which resulted in a failing grade. This was during a time of illness and deaths among close family members. She has enrolled to take an examination on June 13, 2009. The results will be available on July 24, 2009, and if she passes the exam, she will receive her certificate approximately six weeks thereafter. She also sent a letter to the Superintendent in early May asking that the Superintendent facilitate the issuance of an emergency waiver. She received no response.

14. Ms. Bolin is one of three third grade teachers at Lone Tree Elementary School. The other two teachers have a CLAD Certificate. There are now a total of five EL students in the third grade at that site. Ms. Bolin has three of the five. Ms. Bolin explained that four of the five have attained Full English Proficiency (FEP) status, and Ms. Bolin teaches the one

who remains Limited English Proficiency (LEP). At the start of the school year, Ms. Bolin taught four EL students, two FEP and two LEP.

15. Kathleen Sisk has a seniority date of August 28, 1989. Ms Sisk took a course leading to the equivalent of a CLAD Certificate in the summer of 2007. She passed the test but did not follow up. She lost her documents. She was never told she needed a CLAD Certificate or equivalent to keep her job. She was Vice-Principal at Lone Tree Elementary School in 2002-2003 and 2003-2004 and regularly attended the administrators' staff meetings. Nothing was said regarding this requirement. She also sought the Superintendent's help in obtaining an emergency waiver, but received no response. She will take the three-part June 13, 2009 examination, which may be taken following self-study and without the need for a formal CLAD course. Ms. Sisk teaches second grade at Lone Tree Elementary School. She has two EL students. Both have made significant educational progress this year, as reflected on standardized tests.

16. Adele Wapple teaches Kindergarten at Lone Tree Elementary School. Her seniority date is January 3, 1994. Ms. Wapple has been an educator for a total of approximately 28 years. Ms. Wapple does not have a CLAD Certificate or the equivalent. She currently teaches four EL students. All have progressed well over the school year, with one student close to FEP status. There are four Kindergarten teachers at Lone Tree. Ms. Wapple teaches four of the six EL students even though the other two have a CLAD Certificate and she does not. Ms. Wapple was never told that her job was in jeopardy if she did not obtain a CLAD Certificate. When she received her March preliminary notice, she sought the Superintendent's help in obtaining an emergency waiver, and like the others she received no response. She is enrolled in an online course through Stanford University and will complete her coursework for a CLAD Certificate on September 25, 2009. She also intends to take the June 13, 2009 examination described above.

17. Jennifer Shue currently teaches sixth grade language arts and history as well as a language arts support class at Bear River Middle School. Her seniority date is August 23, 2002. She does not have a CLAD Certificate or its equivalent. She was never told she needed such a certificate. She signed up for the courses in October of 2008, after seeing a University of Phoenix brochure sent to her by the Superintendent's secretary. She maintains a grade point average exceeding 3.0 and will be finished on June 8, 2009. She must wait for six weeks to receive official notification of having acquired the certificate. Ms. Shue currently has five EL students in her classes.

Junior Teachers With a CLAD or Equivalent Certificate

18. Jolene Morasch teaches first grade at Lone Tree Elementary School. She has a CLAD Certificate. Her seniority date is August 19, 2003. She has been an educator for approximately eight years. She has a "few" EL students, but considers all of her first graders "English learners." Ms. Morasch feels her CLAD training has provided her with a better understanding of language acquisition, taught her to make the curriculum content more accessible to students, and made her a better teacher

overall. She uses the techniques known as Specially Designed Academic Instruction in English (SDAIE).

19. Susan Lund teaches fifth grade at Wheatland Elementary School. She has a seniority date of August 24, 2004. Her CLAD training was a part of her overall teacher training and the CLAD certificate is “imbedded” in her Multi-Subject Credential. She has eight EL students and uses CLAD techniques in all areas of instruction and all of the time. She taught elsewhere for seven years. All of the fifth grade teachers in her school have CLAD.

20. Amy Childers is a special education teacher at Bear River Middle School with a seniority date of August 23, 2005. She holds a Multi-Subject credential within which is imbedded an ELD certificate, the functional equivalent of a CLAD Certificate. Ten percent of her special education students are also EL, and she uses techniques she learned in CLAD courses with all of her special education students, many of whom have language acquisition deficiencies.

21. Corrine Garcia teaches Kindergarten at Lone Tree Elementary School. Her seniority date is August 22, 2006. She has a Multi-Subject Credential in which an ELD Certificate is imbedded. She believes she has one EL student, but uses the English language development knowledge and techniques with all of her Kindergarten students.

LEGAL CONCLUSIONS

1. The primary legal question to be resolved in this matter is whether the District may, pursuant to Education Code section 44955, subdivision (d), skip junior employees who hold a CLAD Certificate or equivalent and lay-off more senior employees who do not. District’s assertion that it may do so is based, in large measure, on the premise that only teachers holding a CLAD Certificate or equivalent may provide instruction to designated English language learners. Respondents counter that there is no such legal mandate. They are mistaken.

2. The Legislature has directed the California Commission on Teacher Credentialing to “issue a certificate that *authorizes* the holder to provide [specified] services to limited-English-proficient pupils...” (Ed. Code, § 44253.) This statute follows a legislative declaration that limited-English-proficient pupils have the right to a quality education and “their special needs *must* be met by teachers who have essential skills and knowledge related to English language development and specially designed content instruction delivered in English...” (Ed. Code, § 44253.1.) The same section expresses the Legislature’s intent that the CTC “implement an assessment system to certify those teachers who have the essential skills and knowledge necessary to meet the needs of California’s limited-English-proficiency pupils.” Education Code section 44253.5 requires the CTC to develop an examination by which teachers may establish their “competence in the knowledge and skills necessary for

effective teaching of limited-English-proficient pupils.” School districts must report instances in which teachers have been misassigned including those instances in which districts have failed to follow Education Code sections 44253, et seq.(Ed. Code, §44258.9.) In summary, it is the CTC which “licenses” teachers and prescribes the areas in which they may provide instruction by virtue of their credentials. (Ed. Code, §§ 44001, 44830, 44831, and 44253.1.) The CLAD certificate was the designated certificate created in response to the Legislative mandate. If such certificate, or its equivalent, “authorizes” instruction to limited-English-proficient pupils, the teaching of such students without the certificate is necessarily *unauthorized*. This interpretation is in accord with the position taken by CTC itself and the California Department of Education as reflected in documents received in evidence at the administrative hearing.

Respondents (senior teachers) suggest that Education Code section 44258.9, effective January 1, 2008, modifies these provisions and requires a properly certified teacher only if at least 20 percent of the students in a class are EL. However, the statute only concerns monitoring and the reporting of misassignments. The language includes that nothing in the reporting requirements changes a school district’s obligation to provide properly certified teachers for English learners and any failure to do so is a misassignment. (Ed. Code, §§ 44258.9, subd. (c) (4)(B), 33126, subd. (b).) Respondent senior teachers also point to the language in Education Code section 44253.10 which, they assert, only requires that a school district “shall make reasonable efforts to provide limited-English-proficient pupils” with properly certificated teachers. (Ed. Code, § 44253.10, subd. (i).) That section dealt with an alternative method of certification based on staff development training with restrictions on participants and use in a self-contained classroom. The quoted language appears to address the right of teachers awarded “a certificate or certificate of completion” of staff development training to teach English learners. The language does imply a “due diligence” requirement for school districts, but nothing in the subdivision conflicts with other provisions of law which require teachers to hold one of the recognized certificates when teaching English learners.

3. Having established that limited-English-proficient students, or English language learners, must be taught by a teacher possessing a CLAD or equivalent, the next question is whether the District may skip the holders of such certificates and lay off more senior teachers who do not possess them. If District may do so, the authority must be found in Education Code section 44955, subdivision (d).

4. Education Code section 44955 provides in pertinent part:

.....
(b) Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the

beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

.....

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

.....

(2) For the purpose of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws. (emphasis added)

5. Education Code section 44955 provides that when certificated employees face layoffs due to economic exigency, the school district has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers, if the senior teacher has both the credentials and competence to occupy such positions. The intent of the Legislation is clearly to prevent Districts from laying off senior teachers while retaining junior teachers.

However, the District is permitted to depart from a seniority-based economic layoff in situations where the District “demonstrates a specific need for personnel to teach a specific course or course of study...and that the certificated employee (to be exempted from layoff) has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.” (Ed. Code, § 44955, subd. (d) (1).) The issues here are: (A) whether the District demonstrated a “specific need” for personnel to teach a “specific course or course of study”; (B) if so, whether junior employees possess special qualifications necessary to teach such course or course of study; and, (C) whether senior teachers do not possess those special qualifications. (*Bledsoe v. Biggs Unified School Dist.* (2009) 170 Cal.App.4th 127.) The analysis of these factors by the court in *Bledsoe* makes it clear that ordinarily these are factual questions and the school district bears the burden of proving each element. (*Id.* at pp. 138-144.)

6. In this case, District has essentially designated its entire elementary school program as a “course or course of study.” In other words, District does not simply contend that *certain* classes, by virtue of anticipated enrollment of EL students, require the special training and experience evidenced by the possession of a CLAD certificate; rather, District implicitly asserts that *all* classes require such special qualifications. The facts do not support this assertion. The evidence did not establish that District will be unable to match teachers with CLAD Certificates to projected EL students in school year 2009-2010. Neither the testimony of District administrators nor any other evidence established that senior elementary teachers without a CLAD, if retained, would be required to provide instruction to EL students next school year. The Superintendent was specifically asked if these senior

teachers will be teaching EL pupils next fall if they are retained. She answered that they “could be” required to do so in small reading groups organized by reading level, in after school intervention programs, and in Gifted and Talented Education (GATE) classes. No District witness suggested that these situations could not be avoided by selective assignment of teachers. If senior teachers are retained, 21 of 28 teachers, or 75 percent, will be CLAD certified and authorized to provide instruction to the approximately 12 percent of EL students in the elementary school program. It may be necessary to reassign teachers between the two elementary schools, in part because District has chosen to move teachers without CLAD to Lone Tree Elementary School over the last several years, but Education Code section 44955 requires such reassignments to protect the rights of senior employees.⁴

7. District failed to demonstrate a specific need for personnel to teach a specific course or course of study. It is therefore unnecessary to discuss whether District established that the junior employees whom District proposed to skip possess the special qualifications necessary to teach such a course or course of study and whether District established that the senior employees do not possess such qualifications.

8. It also appears that the District’s designation of its entire elementary program, comprising EL and non-EL pupils, as a “course or course of study” does not comport with the definitions of the words and phrase in the Education Code. Education Code section 51015 states: “‘Course’ means an instructional unit of an area or field of organized knowledge, usually provided on a semester, year, or prescribed length of time basis.” Section 51014 states “‘Course of study’ means the planned content of a series of classes, courses, subjects, studies, or related activities.” Only the most tortured interpretation of the plain meaning of words within the statutory definitions would include all of an elementary program. Also, adaptation of curriculum and instruction to limited-English-language pupils based on language development concepts and appreciation for cultural differences may not be fairly characterized as a “course or course of study.” All of the CLAD trained teachers described the teaching strategies and techniques they employ with EL students. However, the “field of organized knowledge” and the “planned content” of the studies vary from class to class. The instruction is tied to the course content of the class being taught, e.g., math, reading, writing, science, arts, social studies, computer skills etc.⁵

9. District also contends that the proposed skipping is justified under subdivision (d) (2) of Education Code section 44955. The essence of District’s argument is that constitutional equal protection considerations require the retention of the junior teachers who

⁴ This matter is somewhat similar to the factual context presented in *Alexander v. Board of Trustees of the Delano Union High School District* (1983) 139 Cal.App.3d 567. The decision predated the addition of subdivision (d) to Education Code section 44955. However, the court’s holding that among teachers with different seniority dates, program needs, and not the “needs of the district and students” is the proper focus, remains viable. The *Alexander* court invalidated the District’s skipping of junior teachers regarded as bilingual where there was no demonstrated connection between teachers’ Spanish speaking ability and actual program needs.

⁵ If classes were *dedicated* to EL pupils such as the transitional English immersion classes permitted by Education Code section 305, such classes might well meet the definition of a “course or course of study.”

hold CLAD credentials, so non-English speakers may be provided equal access to public education. As a corollary proposition, District argues that the selective assignment of EL students to teachers with a CLAD Certificate or the equivalent amounts to invidious discrimination. Subdivision (d)(2) does permit a school district to deviate from seniority rules “[f]or the purpose of maintaining or achieving compliance with constitutional requirements relating to equal protection of the laws.” However, adherence to seniority will not, in this matter, violate the rights of EL students to equal access to education. As the factual findings demonstrate, there are a sufficient number of elementary teachers with CLAD Certificates or the equivalent to accommodate the EL elementary school students. EL students must be educated in English language “mainstream” classes other than for no more than a year in an English immersion class if appropriate. (Ed. Code, § 305.) But neither the Education Code nor general constitutional equal protection principles preclude a District from selectively assigning EL students to classes taught by teachers holding a CLAD certificate or the equivalent. In fact, the right to equal access to education mandates such assignment as reflected in Education Code section 44253.1.⁶

10. In addition to the legal reasons for rejecting District’s proposed skipping in this matter, equitable considerations demand the same result. It was clear from the evidence presented that the District only recently appreciated the need to have EL students taught exclusively by teachers possessing one of the requisite special certificates. Even as late as the current semester, administrators continued to assign EL students to teachers without such certificates, in some cases assigning the lion’s share of such students to the teacher without the necessary certificate. This, of course, provides a possible explanation for why no District administrator informed the more senior respondents that they could be laid off if they did not possess a CLAD Certificate or the equivalent. District intimated that senior teachers had resisted the acquisition of a special certificate because they did not want to teach EL students, but there was no evidence supporting this notion. Instead, the evidence established that the senior teachers, once they realized the need to obtain the additional certification, immediately sought the most expeditious routes for doing so. District argues that at the time of the issuance of the preliminary notices in March, there was no assurance that any of the teachers would ultimately receive the necessary additional certifications, but this ignores the lack of prior notice to teachers about the need to do so, based in part on District’s previous interpretation of law. In summary, the combination of lack of timely notice to senior teachers and the Superintendent’s refusal to consider a Certificate of Need to facilitate the acquisition emergency waivers compels a result which retains the five senior teachers.⁷

11. Cause exists under Education Code sections 44949 and 44955 to provide notice to respondents Amy Childers, Corrine Garcia, Susan Lund, and Joelene Morasch that

⁶ District’s contention would presumably require that every teacher be CLAD certified if one or more EL students are in attendance.

⁷ Also, as the factual findings reflect, among the teachers that Superintendent has tentatively assigned to the middle school, approximately half have no CLAD Certificate or the equivalent. This will presumably necessitate the selective assignment of EL students and/or application for emergency waivers for such teachers.

their services will not be required in the ensuing school year. Such cause relates solely to the welfare of the District and the pupils thereof.

12. Cause does not exist under Education Code sections 44949 and 44955 to provide notice to respondents Mary Jane Bolin, Steve Christensen, Jennifer Shue, Kathleen Sisk and Adelle Wapple that their services will not be required in the ensuing school year.

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

ORDER

Notice shall be given to the identified respondents that their services will not be required for the 2009-2010 School Year because of the reduction and discontinuance of particular kinds of services.

Dated: May 19, 2009

KARL S. ENGEMAN
Administrative Law Judge
Office of Administrative Hearings