

BEFORE THE
GOVERNING BOARD OF THE
GILROY UNIFIED SCHOOL DISTRICT

In the Matter of the Non-Reemployment of
Certificated Employees,

Respondents.

OAH No. 2010031102

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, State of California, Office of Administrative Hearings, heard this matter in Gilroy, California, on April 28, 2010.

James R. Lynch, Attorney at Law, represented the Gilroy Unified School District.

Michelle A. Welsh, Attorney at Law, Stoner, Welsh & Schmidt, represented all of the Respondents, except Victoria Coverson-Baxter.

No appearance was made by or on behalf of Respondent Victoria Coverson-Baxter.

The record closed on April 28, 2010.

SUMMARY

The Board of Trustees of the Gilroy Unified School District decided to discontinue particular kinds of services provided by teachers in the 2010-2011 school year for budgetary reasons. The decision was not related to the competency and dedication of those whose services were proposed to be eliminated. The process complied with Education Code requirements, except as set forth below.

FACTUAL FINDINGS

1. Deborah A. Flores, Ph.D., filed the Accusation in her official capacity as Superintendent of the Gilroy Unified School District (District).
2. All Respondents are certificated employees of the District. A list of the Respondents is attached as Exhibit 1.
3. On March 4, 2010, the Board of Trustees of the Gilroy Unified School District adopted Resolution Number 09/10-53, in which the Board resolved to reduce particular kinds

of services no later than the beginning of the 2010-2011 school year. The reduction of the following full-time equivalent (FTE) positions was approved:

<u>Kind of Service</u>	<u>Number of Full-time Equivalent Positions (FTEs)</u>
Kindergarten – 8th Grade Teachers	39.00 FTEs
Teacher – Community Day Class Program	1.00 FTEs
<u>Total FTEs</u>	<u>40.00 FTEs</u>

4. Resolution 09/10-53 also contains criteria (attached to the Resolution as Exhibit A) that the Board decided were sufficiently important to warrant deviating from seniority order when instituting the reductions. These “skipping criteria” are as follows:

1. Any employee who possesses a BCLAD (Spanish) or equivalent authorization, whose experience includes teaching dual immersion classes in English/Spanish for the District in the 2009-2010 school year, and who is expected to continue teaching such classes for the District in the 2010-2011 school year.
2. Any employee who possesses a single subject credential or subject matter authorization, authorizing the teaching of Math, whose experience includes teaching Math for the District in the 2009-2010 school year, and who is expected to continue teaching such classes for the District in the 2010-2011 school year.
3. Any employee who possesses a single subject credential or subject matter authorization, authorizing the teaching of Science (any form), whose experience includes teaching Science for the District in the 2009-2010 school year, and who is expected to continue teaching such classes for the District in the 2010-2011 school year.
4. Any employee who possesses an Educational Specialist credential, whose experience includes teaching Special Education classes for the District in the 2009-2010 school year, and who is expected to continue teaching such classes for the District in the 2010-2011 school year.
5. Any employee who possesses a certificate of completion of a Gifted & Talented Education (GATE) program offered by an accredited institution of higher education, whose experience

includes teaching in GATE courses of study for the District in the 2009-2010 school year, and who is expected to continue teaching such classes for the District in 2010-2011 school year.

6. An employee who the Superintendent determines to retain because he/she possesses special skills, training, and/or education that is needed to teach a specific course or course of study in the 2010-2011 school year, that more senior employees do not possess.

In addition, the Resolution contains the following language:

The Superintendent or designee is authorized to determine which employees qualify to be “skipped” for the Reduction in Force and to determine the manner in which the foregoing criteria shall be applied to each employee.

5. The Resolution also contains criteria (attached to the Resolution as Exhibit B) to be used to determine the order of termination of certificated employees with the same first date of paid service. These criteria are commonly referred to as the tie-breaking criteria. They are as follows:

Criterion	Points
Possession of credential(s) authorizing services for the District	3 for each professional clear 2 for each preliminary 1 for each for any other credential
Subject matter authorizations, including supplemental authorizations, on credentials authorizing service for the District	1 per authorization
Column placement on salary schedule	1 per applicable column
Service on a school site level committee: “SSC” - School Site Council “DSLTL” – District Site Leadership Team	1 per SSC 1 per DSLTL
Service on a District Level Committee	1 per District Level Committee
Service as a BTSA Mentor Teacher	3
Possession of Bilingual Cross Cultural Language Development Certificate	1

Further, the Resolution provides:

Employees with a greater number of points shall be considered more senior than employees with a fewer number of points, for

purposes of determining order of layoff and other of reemployment.

If application of the foregoing criteria fails to resolve a tie among two or more employees, among the employees who remain tied the employee with the earliest date of issuance of a preliminary or professional clear credential shall be considered the more senior employee. As among employees who remain tied who have never obtained a preliminary or professional clear credential, the employee with the earliest date of issuance of an intern credential shall be considered the more senior employee. As among employees who remain tied who have never obtained an intern, preliminary, or professional clear credential, the employee with the earliest date of issuance of an emergency or pre-intern credential, or short-tem staff permit shall be considered the more senior employee.

The Superintendent is authorized to determine the number of tiebreaking points to be awarded to each employee and to determine the manner in which the tiebreaking criteria shall be applied to each employee.

If application of all of the foregoing criteria fails to resolve a tie among two or more employees, the Superintendent or designee will use a device or program that randomly selects numbers. The employee with the highest number will be the most senior among those remaining tied, with other employees being appropriately ranked in descending numerical order.

6. The District's Seniority List was used to determine who would receive notices. District staff, including Superintendent Flores, prepared the list with information from employees, personnel records, and public records such as the website of the California Commission on Teacher Credentialing (CTC). Four groups of teachers have the same start dates. A Tiebreaking Calculation Worksheet was used to give each of these teachers a place on the list according to the tie-breaking criteria created by the Board. All of the ties were broken when the supplementary criterion concerning the date of issuance of a credential was applied.

7. On March 5, 2010, written notice of the recommendation that their services will not be required for the 2010-2011 school year was served on 40 certificated employees, including Respondents.

8. Each of the Respondents filed a timely request for hearing. Accordingly, an Accusation was filed and served. Each Respondent filed a timely notice of defense and this hearing followed.

9. As of the date of hearing, the District had rescinded 14 layoff notices and was working on further rescissions.

10. Superintendent Flores credibly testified about the reasons for the Resolution. The District needs to cut \$6.3 million from its budget to balance it. Flores explained that the skipping criteria were formulated to respond to District needs for specialized instruction. The District has a very successful dual-immersion program where students are taught in two languages. A BCLAD is required to teach those classes and it is sometimes difficult to find teachers with BCLADs. Similarly, it is difficult to fill positions in math, science, and special education, and the District determined it needed to skip teachers who have been teaching in those subject areas. The District also needed to skip GATE certified teachers because of the programs at one elementary and one middle school.

Objections of particular teachers

11. Respondent Shanna Aldridge teaches 6th grade math and science. The District stipulated that her correct seniority date is August 13, 2009. This correction creates a tie. Application of the tie-breaking criteria gives her six points, which ties her with Respondent Katherine Lee. As Lee obtained her credential before Aldridge, Aldridge is junior to Lee on the Seniority List.

12. Respondent Perlene Lake holds a multiple subject credential and endorsements to teach English and Business. Her seniority date is August 13, 2009. Janet Hill teaches English and, with a seniority date of August 20, 2009, she is junior to Lake. (Hill was not noticed for layoff.) The District stipulated that Lake possesses the credentials to teach in Hill's assignment. Given these facts, Lake may not be laid off.

13. Respondent Marcie Schnegelberger is a 5th grade teacher tied for seniority with others who also started on August 13, 2009. She held an administrative services credential that expired December 1, 2009, and was re-issued April 5, 2010. The District stipulated that Schnegelberger would receive three additional tie-breaking points (in addition to the ten already given her) if the CTC agrees to make the re-issuance retroactive to the date it expired.

14. Respondent Laura Rigby has taught math at the Dr. T. J. Owens Early College Academy (GECA) since August 4, 2009. She holds a multiple subject credential and a supplementary authorization in math, which authorizes her to teach math curriculum designed for students in 9th grade and below. Rigby teaches algebra and geometry, and the majority of her students are in 9th grade, although some are in 10th and fewer are in 11th grade. GECA is an advanced program and some of the 9th grade students "jump into geometry." Rigby has received a preliminary assignment to teach algebra and geometry next year. For all of these reasons, she asserts that she is entitled to be skipped under the District's skipping criterion number two:

Any employee who possesses a single subject credential or subject matter authorization, authorizing the teaching of Math, whose experience includes teaching Math for the District in the 2009-2010 school year, and who is expected to continue teaching such classes for the District in the 2010-2011 school year.

The evidence demonstrated that all three conditions specified in skipping criterion number two have been met. The rationale behind the District's decision that she did not qualify to be skipped was unclear. Rigby's argument is persuasive and the District will be required to exempt her from layoff.

15. Respondent Matthew Romiti holds a multiple subject credential and his seniority date is August 14, 2008. Respondent Cheryl Galloway holds a multiple subject credential and her seniority date is September 17, 2008. Romiti and Galloway are credentialed and competent to teach CORE, which requires a multiple subject credential. Romiti and Galloway assert that there may be teachers junior to them who hold only single subject credentials and are being retained to teach CORE next year. This assertion was not proven.

16. Respondent Marcie Schnegelberger was trained as a BTSA (Beginning Teacher Support Advisor) teacher in another district, but has not served in that position in any district. Her contention that she qualifies to receive tie-breaker points for the training is rejected. The criterion clearly states that one must have served as a BTSA mentor teacher.

17. Respondent Sabrina Smallen teaches 4th grade. She holds a multiple subject credential and a supplement in social science, which allows her to teach social science up to the 9th grade. Her seniority date is August 14, 2008. Karen Skahill holds a .6 FTE position teaching high school: .4 FTE in World History (10th grade) and .2 FTE Global History (9th grade). Her seniority date is September 13, 2009, making her junior to Smallen. (Skahill did not receive a layoff notice.)

Smallen contends that she is entitled to teach the .2 FTE Global History assignment and should therefore not be laid off to that extent. The District argues against this contention, citing *Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334. The court in *Hildebrandt* held that a part-time employee with greater seniority was not entitled to bump a full-time employee with less seniority. In other words, the District was not required to create a part-time position to accommodate the more senior employee. The facts are reversed in this case: Smallen is full-time and Skahill holds the part-time position. And, the factual situation differs further. The high school assignments are already split into courses. The District did not demonstrate that it would be unreasonable, or even impractical, to assign Smallen to teach the single course currently taught by Skahill that she is qualified to teach.

Education Code section 44055, subdivision (b), prevents the termination of a senior employee while retaining a junior employee to render a service that the senior employee is qualified to provide. And subdivision (c) requires that assignments be made in such a way that employees who have the requisite seniority and qualifications are retained. It is therefore concluded that Smallen's layoff must be limited to .8 FTE.

18. Respondents together contend that the proposed reduction in services will be detrimental to the District, and that it therefore cannot be found, as required by Education Code section 44949, that "the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof." It is true that service reductions will likely be detrimental to students in the District, but the District is required to operate in a fiscally sound manner. Without fiscal integrity, the District cannot adequately serve its schools or its pupils. In circumstances such as these, where a District is facing a multi-million dollar loss of funding, and in the absence of proof that the District acted in an arbitrary or capricious manner, it is necessarily concluded that the service reductions are related to the welfare of the schools and pupils.

The Board's decision to reduce or discontinue the identified services was made solely on the basis of the needs of the District and its pupils.

19. Except as regards Respondents Perline Lake and Sabrina Smallen, no permanent or probationary employee with less seniority is being retained to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 have been provided as required. The District established jurisdiction for this proceeding as to each Respondent.

2. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees of the District due to the reduction of particular kinds of services.

3. By reason of the matters set forth in Finding 12, cause does not exist as required by Education Code section 44955 to give notice of layoff to Respondent Perline Lake.

4. By reason of the matters set forth in Finding 14, cause does not exist as required by Education Code section 44955 to give notice of layoff to Respondent Laura Rigby.

5. By reason of the matters set forth in Finding 17, cause exists as required by Education Code section 44955 to give notice to Respondent Sabrina Smallen of the reduction of only .8 FTE of her position.

6. All contentions made by Respondents not specifically addressed above are found to be without merit and are rejected.

ORDER

1. The District shall make corrections to its Seniority List and other records as necessary to conform to Factual Findings 11 and 13.

2. The Accusation against Respondent Perline Lake is dismissed.

3. The Accusation against Respondent Laura Rigby is dismissed.

4. Notice may be given to Respondent Sabrina Smallen that .8 FTE of her position will not be required for the 2010-2011 school year because of the reduction of particular kinds of services.

5. Notice may be given to the remaining Respondents that their services will not be required for the 2010-2011 school year because of the reduction of particular kinds of services.

DATED: _____

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT 1: LIST OF RESPONDENTS

1. Aldridge, Shanna
2. Bearden, Barbara
3. Canlas, Tracy
4. Coverson-Baxter, Victoria
5. Cummings, Analise
6. Fortino, Jill
7. Galloway, Cheryl
8. Gee, Tiffany
9. Iwanaga, Lauren
10. Lake, Perlene
11. Lee, Katherine
12. Lopez, Sylvia
13. Lu, Thanh (Katie)
14. Middleton, Miranda
15. Mikkelsen, Theresa
16. Miller, Kristin
17. O'Rourke, Crystal
18. Rede, Chad
19. Rigby, Laura
20. Romiti, Matthew
21. Schedler, Kris
22. Schnegelberger, Marcie
23. Smallen, Sabrina
24. Tognetti, Ashley
25. Vigilante-Tait, Sarah