

BEFORE THE
GOVERNING BOARD
TORRANCE UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

SHIRIN ABYANEH, and Other Certificated
Permanent and Probationary Employees of
the Torrance Unified School District,

Respondents.

OAH Case No. 2010031440

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge, on April 26, 2010, at Torrance. Complainant Mario Liberati, Senior Director, Human Resources, of the Torrance Unified School District was represented by Spencer E. Covert, Attorney at Law.

Respondent Denise Leonard was represented by Michael J. Deniro, Attorney at Law, only on the first day of hearing. All other respondents were represented by Daniel J. Kolodziej, Attorney at Law. The Administrative Law Judge marked the List of Respondents as Exhibit I and admitted the exhibit into evidence.

Because there was not sufficient time to complete the hearing on April 26, 2010, the parties' request for a continuance of the hearing was granted. On April 29, 2010, the parties appeared for a telephonic trial setting conference before the Office of Administrative Hearings and the continued hearing was scheduled for May 20 and 25, 2010. As a result of the continuance, the dates provided in Education Code sections 44949 and 44955 for issuance of a proposed decision and for notifying certificated employees were extended for a period of time equal to the continuance.

The continued hearing commenced and was concluded on May 20, 2010. At the conclusion of the continued hearing, the parties' request to file written argument was granted. On May 25, 2009, complainant's counsel filed a Closing Brief, which was marked as Exhibit 21. On May 25, 2010, counsel for respondent Denise Leonard filed a Post Hearing Brief and counsel for all other respondents filed a Post Hearing Brief, which were marked as Exhibit G and Exhibit H, respectively.

Oral, documentary, and stipulated evidence having been received and written arguments reviewed, the Administrative Law Judge submitted this matter for decision on May 25, 2010, and finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on March 25, 2010, the Accusation was made and filed by Mario Liberati in his official capacity as Senior Director, Human Resources, Torrance Unified School District, State of California (District).

2. Respondents, and each of them, are employed by the District as permanent or probationary certificated employees.

3. The District is a unified school district comprised of four high schools, continuation and adult schools, a community day school, eight middle schools, and 17 elementary schools. The District serves and educates approximately 24,500 pupils in kindergarten through grade 12 who reside in the Torrance and South Bay areas of Los Angeles County.

4. Due to the ongoing state budget crisis and its concomitant effect upon its budget, the District has determined that it must reduce expenditures to maintain a balanced budget and its reserve. On March 1, 2010, the Deputy Superintendent of Administrative Services gave a presentation of the District's current fiscal status and made budget recommendations to the Governing Board of the District. The Deputy Superintendent prepared a Second Interim Report for the 2009-2010 fiscal year for which he took into consideration the January 2010 Governor's proposed budget for the state which recommended reductions in central administration costs, personnel, cost of living allowances, and average daily allowances. In addition, the Deputy Superintendent was required to take into account an increase in class size in kindergarten through third grade in the elementary schools, which had been previously approved by the Governing Board in November 2009 and required a reduction of 54 full-time equivalent positions, as well as proposed larger class sizes in grades six through 12. Based on his projections and financial analysis, the Deputy Superintendent recommended budget cuts of \$7 million for the 2010-2011 school year and \$18.6 million for the two school years from 2010 through 2012. The Deputy Superintendent discussed the budget cuts with the Deputy Director of Human Resources, who, in turn, identified particular kinds of services that were recommended for reduction or discontinuance. On March 1, 2010, the Governing Board adopted the Second Interim Report and resolved to reduce or discontinue particular kinds of services for the ensuing school year.

5. (A) On March 1, 2010, in Resolution No. 1-09/10, pursuant to Education Code sections 44949 and 44955 and based upon the recommendation of the Deputy Superintendent and Deputy Director of Human Resources, the Governing Board determined that it was in the best interests of the District and its students to reduce or discontinue certain particular kinds

of services at the close of the 2009-2010 school year and to layoff the concomitant number of probationary and permanent certificated employees. The Governing Board determined that the layoff of probationary and permanent certificated employees would be in addition to the layoff of all temporary and categorically-funded certificated employees of the District and would not be decreased by the resignations, non-re-elections, and retirements occurring on or before the date of the resolution.

(B) The Governing Board directed the Superintendent and/or his designee to serve notices of layoff on probationary or permanent certificated employees in accordance with and in the manner prescribed by Education Code sections 44955 and 44949 in order to reduce or discontinue particular kinds of services specified in the resolution.

6. Beginning on or about March 10, 2010, and pursuant to Resolution No. 1-09/10 and the provisions of Education Code sections 44949 and 44955, the Senior Director of Human Resources as the designee of the Superintendent gave written notices by personal service to respondents that their services will not be required for the ensuing 2010-2011 school year because the Governing Board had determined to reduce or discontinue certain particular kinds of services at the end of the current school year and had resolved that it was necessary to layoff certificated employees under Education Code section 44955. Respondents timely requested a hearing to determine if there is cause for not re-employing them for the ensuing school year. There were approximately 26 certificated employees served with preliminary notices who did not file requests for hearing.

7. The District's preliminary notice of layoff dated March 10, 2010, was sufficient in providing notice to respondents under Education Code sections 44949 and 44955. Respondents were not prejudiced by errors in the notices, if any, with respect to the description of the spelling of their names, work site or school locations, listing of particular kinds of services to be reduced or discontinued, or any other matters. No claims or complaints were raised in the hearing that the preliminary notices or contents thereof were deficient in any respect.

8. On or about March 25, 2010, the District properly served respondents by certified mail with an Accusation, Statement to Respondent, Resolution No. 1-09/10, copies of Government Code sections 11507.5-11507.7, a blank Notice of Defense form, Request for Discovery, and Notice of Hearing. All respondents served with the Accusation filed timely notices of defense, requesting a hearing to determine if there is cause not to employ them for the ensuing school year and objecting to the Accusation. Earlier, on March 23, 2010, respondents' counsel filed a Joint Notice of Defense for respondents. All prehearing jurisdictional requirements have been met by the parties.

9. On April 12, 2010, in Resolution No. 2-09/10, the Governing Board of adopted a tie-breaker resolution, which set forth criteria to be used in determining the order of termination or layoff of certificated employees who have the same first date of paid service with the District. Under the tie-breaking criteria, the Governing Board gave the highest tie-breaking priority to possession of Bilingual Cross-cultural Language and

Academic Development (BCLAD) and Cross-cultural Language and Academic Development (CLAD) certificates by March 15, 2010. The Governing Board found that the tie-breaking criteria were based solely on the needs of the District and its students.¹

10. On March 1, 2010, pursuant to Resolution No. 1-09/10 and its findings, the Governing Board resolved and took action to reduce or discontinue certain services or programs offered by the District for the 2010-2011 school year in the following FTE positions:

<u>Elementary Schools (K-5)</u>	<u>Full-Time Equivalent Positions</u>
Multiple Subject Classroom Teachers (K-5)	54.0
<u>Secondary Schools</u>	
Multiple Subject Classroom Teachers (6th Grade)	8.0
Art Teacher	1.0
Business Teacher	1.0
Chinese Teacher	1.0
English Teacher	8.0
English Language Development Teacher	1.0
French Teacher	1.0
Home Economics Teachers	3.0
Industrial and Technology Teachers	4.0
Japanese Teachers	2.0
Korean Teacher	1.0
Math Teachers	8.0
Physical Education Teachers	6.0
Science Teachers (Biological)	3.0
Science Teachers (Chemistry)	3.0
Science Teachers (Geosciences)	3.0
Social Studies Teachers	10.0
Spanish Teachers	2.0
High School Counselors	4.0

¹ Under Resolution No. 2-09/10, the Governing Board resolved that its eighth and final criteria for breaking ties between certificated employees having the same seniority date is the last four digits of the certificated employees' Social Security number. During the hearing, the District averred that the assignment of the last four digits of a person's Social Security number is random. Nevertheless, the District should take proper precautions to protect the privacy and/or confidentiality of certificated employees' Social Security numbers inasmuch as financial institutions frequently use the last four digits to identify clients and their accounts. The Administrative Law Judge has redacted or obliterated these numbers in the Tie-Breaker Worksheet (Exh. 10). Respondents made no claims that the District's application of this tie-breaker criteria or use of Social Security numbers to rank respondents was erroneous or arbitrary and capricious in any respect.

Adult Education

Child Care Teacher 1.0

Administration

Director, Child Welfare and Attendance 1.0

Special Education Coordinator 1.0

Elementary School Assistant Principal 1.0

The reduction or discontinuance of the services set forth hereinabove constitute a total of 128.0 full-time equivalent positions.

11 The services set forth in Finding 10 above are particular kinds of services performed by certificated employees of the District which may be reduced or discontinued within the meaning of Education Code section 44955. The determination of the Governing Board to reduce or discontinue these services is within its sound discretion and not arbitrary or capricious. The District demonstrated that the reduction or discontinuance of these particular kinds of services is related to the welfare of the District and its pupils and is necessary in order for the District to maintain a balanced budget and a sufficient reserve as well as to provide essential services.

12 (A) The District prepared a Seniority List (Exh. 5) which contains the names of certificated employees and their seniority dates or first dates of paid service, current assignments or work locations, job titles, and FTE positions, employment status, and credentials and authorizations. Earlier, on or about December 1, 2009, the District sent letters to certificated employees, stating their seniority dates, employment status, credentials, and certificates as shown in District records. Certificated employees were asked to submit any corrections. The District received 10 responses and, after reviewing personnel files, made some corrections and updates to the records. The District also prepared a List of Credentials for Probationary and Permanent Certificated Employees (Exh. 6), which includes authorizations as well as expiration dates of credentials and authorizations.

(B) The District applied the tiebreaking criteria to respondents who first rendered paid service in a probationary position on the same dates beginning with the date of August 31, 2005, and ranked them in order of termination on a Certificated Layoff Tie-Breaker Worksheet (Exh. 10). The District also developed certificated layoff worksheets of respondents in inverse order of seniority (Exh. 11) and by the particular kinds of service to which they are currently assigned and which are subject to reduction or discontinuance in this layoff proceeding (Exh. 13). The District determined whether the respondents hold credentials in other areas of service or teaching and are entitled to bump other certificated employees and whether certain certificated employees should be skipped and retained.

13. Further, the District has obviated the need to reduce or discontinue all of the particular kinds of services described in Finding 10 above and to terminate the employment of all respondents given preliminary notice and accusations by taking into account personnel

changes and attrition due to reassignments, retirements, and/or resignations of individual certificated employees within the District. The District has reasonably determined and accounted for what will be positively assured attrition among its certificated staff for the ensuing 2010-2011 school year and reduced by corresponding number the number of certificated employees whose employment must be terminated be due to the reduction or discontinuance of particular kinds of services.

14. On the first day of the hearing, the District rescinded the preliminary notice and dismissed the Accusation against respondent Richard Mulligan, a math teacher at South High School. Mulligan has a seniority date of September 5, 2006, and possesses standard secondary credentials in mathematics and life physical science or physics as well as a CLAD certificate.

15. (A) On the second day of the hearing, the District rescinded the preliminary notices and dismissed the Accusation against the following respondents, who are elementary school teachers holding clear multiple subject credentials and CLAD certificates: Shawna Peacock, Anissa Shbaro, Andrea King, Holly Evans, Claudine Valot, Amber Martin, Jeffrey Jamile, Christine Christian, Michelle Senechal, Lanae Maeda, Lisa Kim, Timothy Magnus, Maria Ruth, Karen Kasper, Rubina Ahmed, Keri Kendall, Debra Owens, Candy Mintz-Moreno, Lori Perez, Katherine Johnson, Cheryl Thom, Robert Flanders, Carolyn Keeney, Kimberly Gauna, Allen Chin, Jamie Gendrano, April Pages, Denise Palmieri, Steve Jennewein, Rachel Kimmel, Judy Kawazoe, and Lucia Doty.

(B) The District also rescinded the preliminary notices and dismissed the Accusation issued to the following respondents: secondary art teachers Jessica Cheung, Joyce Byean, Aja Elkind, and Linsey Herrera; English teachers Salina Eick and Kevin Van Waardenbug; French teacher Marie Forel; home economics teachers Holly Hall and Lisabeth Diliberto; industrial and technology teachers Michael Ellena, Christy Evans, and Abraham Rivera; Japanese teachers Keita Kadono and Sachie Horita; and Korean teacher Grace Pak.

(C) On the second day of the hearing, the District also rescinded the preliminary notices and dismissed the Accusation issued to respondents Barbara Zondiros, Harold Rasmussen, Danny Jimenez, and Douglas Raizk, who are secondary math teachers and hold single subject credentials in mathematics.

(D) The District likewise rescinded the preliminary notices and dismissed the Accusation issued to the following respondents: physical education teachers Scott Peppard, Janet Chase, and Michael Caporaso; biological science teacher Bridget Ely; chemistry teacher James Estabrook; social studies teachers Christine Kruse, Brooke St. Hilaire, and Nathan Jones; and high school counselors Courtney Matz and Jennifer Radie.

16. (A) Between the first and second days of the hearing, the District received an undetermined number of additional resignations from certificated employees due to a retirement incentive program. The District accounted for this additional assured attrition, in part, by dismissing the Accusation issued to the respondents set forth in Finding 15 (A) –

(D). Moreover, four respondents, Jennifer Williams, Abraham Rivera, Scott Peppard, and Nathan Jones, applied for and/or received emergency CLAD permits after March 15, 2010. On the second day of the hearing, the District dismissed the Accusation against Rivera, Peppard, and Jones; respondent Jennifer Williams remains subject to layoff based on her seniority date. As such, all of the respondents who had their preliminary notices and the Accusation dismissed during the hearing possess CLAD certificates or emergency CLAD permits

(B) Two respondents, Ronald Ambro and Chad Williams, do not possess CLAD certificates or emergency CLAD permits and remain subject to layoff pursuant to the reduction or discontinuance of particular kinds of services.

Cross-cultural Language and Academic Development--CLAD

17. (A) California law requires that teachers must have certifications or authorizations of their knowledge, skills, and abilities to provide instruction to English Language Learner (ELL) pupils. (Ed. Code, §§ 44001, 44830, subd. (a), 44831, 44253, and 44253.1.) Fourteen percent of the District's pupils are English Language Learners or speak a first language other than English and have been designated as Limited English Proficient. Since an undetermined date, the District has had a Master Plan for Educational Services for English Language Learners (Master Plan). The Master Plan assists the District's staff, administrators, teachers, and parents to understand the program and services for ELL students in kindergarten through grade 12. The Master Plan follows regulations of the Department of Education and state and federal law. The goal of the Master Plan is to help develop ELL students to develop proficiency in English and in the District's core curriculum as rapidly and effectively as possible in an established English language classroom or in an alternative (e.g. dual language) program with a curriculum designed for them. All ELL students are to be placed in age-appropriate English Language classrooms where they can receive a program of English Language Development (ELD) and Specially Designed Academic Instruction in English (SDAIE).

(B) Under the Master Plan, all teachers of the District, who are assigned to provide ELD or access to core curriculum instruction for ELL students, must have, or be actively in training to receive, an English learner authorization. In other words, teachers who provide ELD or SDAIE instruction for ELL pupils must be authorized to do so by the Commission on Teacher Credentialing or be in training to receive state certifications for or as a Language Development Specialist, California Teacher of English Learners (CTEL), BCLAD, or CLAD. Teachers who are not certified to provide ELD or SDAIE instruction to ELL students are required to complete a Document of Commitment showing a timeline towards receiving certification.

18. By a letter dated November 18, 2008, the District advised respondents Ronald Ambro, Nathan Jones, Scott Peppard, Abraham Rivera, Stephen Schmitz, Chad Williams,

and Jennifer Williams that state law required teachers with identified ELL students in their classrooms and providing services to ELL students to have an appropriate English Learner authorization. At that time, these seven respondents had ELL students in their classrooms but did not possess certifications to teach them. The District advised these respondents that they were each required to obtain at a minimum an emergency CLAD permit from the Commission on Teacher Credentialing for the 2008-2009 school year. Six semester units of appropriate coursework in a CTEL program or passage of two sections of the examination for the CLAD certificate were required for renewal of the emergency CLAD permit.

19. (A) In implementing Resolution No. 1-09/10 to reduce or discontinue particular kinds of services for the 2010-2011 school year, the District determined to use possession of a CLAD certificate as a skipping criterion. The District placed certificated employees who did not possess a CLAD certificate at the top of the layoff list for their service area regardless of their seniority dates.

(B) As of March 15, 2010, multiple subject elementary classroom teacher Jennifer Williams; industrial and technology teachers Ronald Ambro and Abraham Rivera; physical education teacher Scott Peppard; social studies teacher Nathan Jones; and biological science teacher Chad Williams did not possess a CLAD certificate. Accordingly, the District placed Jennifer Williams, Ambro, Rivera, Peppard, Jones, and Chad Williams at the top of the layoff list for their respective service areas, noting that each of them did not possess a CLAD certificate. Certificated employee and physical education teacher Stephen Schmitz also did not possess a CLAD certificate either but he resigned from his employment with the District.

(C) After March 15, 2010, respondents Jennifer Williams, Rivera, Peppard, and Jones each obtained an emergency CLAD permit. Thereupon, the District removed the designation on the Certificated Layoff Worksheet that each of them had "NO CLAD" and moved them to their places on the seniority list for their service area based on their actual first dates of paid service. When the District accounted for additional positively assured attrition, the District then rescinded the preliminary notices and dismissed the Accusation against respondents Rivera, Peppard, and Jones due to the seniority of their employment with the District. Jennifer Williams remains subject to layoff based on her seniority date.

(D) Because they do not possess CLAD certificates and did not obtain emergency CLAD permits since March 15, 2010, respondents Ambro and Chad Williams remain subject to layoff and are at the top of the seniority list in their respective service areas of industrial and technology and biological science.

20. (A) Respondent Chad Williams is a biological science teacher at West High School. He holds a clear single subject credential in biological science and has a seniority date of September 1, 1999. Because he does not have a CLAD certificate or emergency CLAD permit, Chad Williams is subject to layoff. He has more seniority with the District than two other biological science teachers who remain subject to layoff, respondents Silvia Cuevas and Marie Nonato, who share the seniority date of September 4, 2007. Chad

Williams is senior to respondent and fellow biological science teacher Bridget Ely whose preliminary notice and Accusation were withdrawn by the District.

(B) In November 2008, the District notified Chad Williams that he had identified ELL students in his classroom and was required to apply for an emergency CLAD certificate. Subsequently, Williams applied for and received an emergency CLAD permit. He did not make progress towards obtaining the certificate and was not able to renew the emergency permit. He enrolled in classes at the University of Phoenix to complete coursework for the CLAD certificate but stopped taking the classes in March 2010. As of March 15, 2010, Chad Williams did not have a CLAD certificate or an emergency CLAD permit. When the District asked him in April 2010 for his plans or timeline to obtain CLAD authorization, he did not indicate having any plans or a timeline to obtain a CLAD certificate or to be considered a teacher in training for such certificate.

21. (A) Respondent Ronald Ambro is an industrial and technology teacher at Hull Middle School. He possesses a life single subject credential in industrial arts and has a seniority date of September 20, 1999. He is the most senior of industrial and technology teachers but does not have a CLAD certificate or emergency CLAD permit.

(B) In November 2008, Ambro received the District's notification that he was required to apply for an emergency CLAD permit to be able to teach ELL students in his classroom. On November 19, 2008, Ambro acknowledged receipt of the requirements for issuance and renewal of an emergency CLAD permit. In lieu of taking six semester units of coursework, Ambro was made aware that he had to pass two of the three tests of the CTEL examination or complete three semester units of coursework for a CLAD certificate in lieu of each test not taken. Ambro advised the District of his intent to complete the CLAD requirements by completing CLAD coursework offered by a professional preparation institution accredited by the Commission for Teacher Credentialing or by passing the CTEL examination.

(C) During the 2008-2009 school year, Ambro obtained an emergency CLAD permit after passing one of the three tests of the CTEL examination. Because he did not make progress towards obtaining a CLAD certificate by the end of that school year, Ambro did not qualify for renewal of his emergency CLAD permit and the emergency permit was not renewed. He did not take the CTEL examination for a CLAD certificate during the 2009-2010 school year. Instead, Ambro enrolled in an internet course of study with the Grand Canyon University of Arizona for a master of arts degree in education. He assumed that the coursework would meet the coursework requirements for a CLAD certificate although he did not consult with the District or the Commission on Teacher Credentialing. On or about March 5, 2010, Ambro learned that his master's coursework did not meet the requirements for issuance of a CLAD certificate.

(D) As of March 15, 2010, Ambro did not possess a CLAD certificate or an emergency CLAD permit. In April 2010, the District notified Ambro that its records show he does not have a CLAD certificate and asked him for a timeline of his plans to obtain such

authorization. The District indicated that, to be considered a teacher in training for a CLAD certificate, he must complete some portion of the process towards obtaining a CLAD certificate. On April 16, 2010, Ambro replied that he planned to take the CTEL examination scheduled for June 12, 2010. He has, in fact, registered to take that scheduled CTEL examination. He hopes to complete requirements for a CLAD certificate by June 2011. As such, respondent Ambro has not qualified and would not qualify for a CLAD certificate or emergency permit for the upcoming 2010-2011 school year. Ambro is the only industrial arts teacher at his middle school site. There are ELL students in his classroom this year. ELL students are expected to be enrolled in his classroom in the next school year.

22. (A) Respondent Scott Larson is a woodshop teacher at North High School. He possesses a single subject credential in industrial arts and technology and a CLAD certificate. His seniority date is September 9, 2002. Based on his seniority date and CLAD certificate, Larson is the most senior of the three industrial and technology teachers who possess a CLAD certificate and remains subject to layoff due to the reduction of industrial and technology teachers.

(B) When he was hired eight years ago, Larson was told by District personnel that he needed to obtain a CLAD certificate to keep his teaching job. He then spent time and money to fulfill the requirements for the certificate. Larson asserts that he and other teachers followed the District's directions by obtaining CLAD certificates and that it is not fair that the District is allowing a few teachers to be skipped after they received emergency CLAD permits after March 15, 2010.

23. (A) Respondent Scott Peppard is a physical education teacher and water polo and swimming coach at Torrance High School. He holds a clear single subject credential in physical education, a supplemental authorization in social science, and an emergency CLAD permit. His seniority date is September 7, 2001. Due to the additional retirements of certificated employees and Peppard having obtained an emergency CLAD permit, the preliminary notice and Accusation against Peppard were withdrawn and he will be retained to teach for the next school year.

(B) In November 2008, the District notified Peppard that he had identified ELL students in his classroom and was required to apply for an emergency CLAD certificate. During the 2008-2009 school year, Peppard was advised by his school site principal that he needed a CLAD certificate to continue teaching in the District. On March 15, 2010, Peppard first applied for an emergency CLAD permit. He is now enrolled in related coursework at UCLA and plans to complete the requirements for issuance of a CLAD certificate by October 2010.

24. Respondent Matthew Teaney is a physical education teacher at Madrona Middle School. He possesses a clear single subject credential in physical education and a CLAD certificate. His seniority date is September 25, 2007, and he is subject to layoff due to the reduction of secondary physical education teachers. When he was first hired by the District, Teaney was advised by his school site principal that he needed to obtain a CLAD

certificate in order to remain employed by the District. He then completed the requirements for the certificate to try to ensure his job security. As the most junior of physical education teachers, respondent Teaney may be laid off from his employment with the District due to the reduction of physical education teachers.

25. (A) Under Education Code section 44955, subdivision (d), a school district may deviate from terminating certificated employees in order of seniority when it demonstrates having a specific need for personnel to teach a specific course of study or to provide services and that certificated employees have special training and experience necessary to teach that course of study or to provide those services which other certificated employees with more seniority do not possess. Here, the District showed that 14 percent of its students are English Language Learners. State law requires that teachers possess the proper credentials and authorizations to provide instruction to ELL pupils and the District has promulgated a Master Plan to comply with state laws regarding the teaching of ELL pupils.

(B) For the past two years, the District has advised its certificated employees that a CLAD certificate or emergency CLAD permit was required not only to teach ELL pupils but also as a condition of continued employment. The preponderance of the evidence suggested that most, if not all, classrooms include ELL pupils and showed that almost all of the certificated employees have obtained CLAD certificates. As such, the facts of this matter are distinguishable from those in *Alexander v. Board of Trustees* (1983) 139 Cal. App. 3d 567, where the Court of Appeal found that the Delano Joint Union High School District erred in skipping junior teachers having bilingual abilities.

26. Based on Findings 17 – 25 above, with respect to the current reduction of particular kinds of services for the 2010-2011 school year, the District has demonstrated that it has a program need for teachers who possess the special training and/or experience to teach ELL pupils as evidenced by their having CLAD certificates. Possession of a CLAD certificate has been required of certificated employees for the past two years. The District initially determined to skip all certificated employees who hold a CLAD certificate and to place those certificated employees who do not possess a CLAD certificate at the top of the layoff list in their service areas regardless of their seniority. Since March 15, 2010, the District has determined to also skip those respondents who have applied for emergency CLAD permits. Under the circumstances of this matter, the possession of CLAD certificates or emergency permits as a basis to skip certificated employees and respondents from the initial determination of layoff or order of layoff constituted proper exercises of the District's discretion under Education Code section 44955, subdivision (d). Both respondents Ambro and Chad Williams may be given notice that their services will not be needed for the upcoming school year due to the reduction of particular kinds of services.

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Claims of Other Respondents

27. (A) Pursuant to a stipulation, and for purposes of this layoff proceeding for the 2010-2011 school year only, the District determined to change or modify the first dates of paid service or seniority dates of certain respondents. The seniority date of respondent Jean Henshall was changed to December 5, 2003. The seniority dates of respondents Andrea Dikilato and Elizabeth Loew were both changed to October 13, 2003. The seniority date of respondent Kathy Black was changed to March 19, 2004. The seniority date of Kristin Kihara was changed to November 24, 2003.

(B) After their seniority dates were modified, respondents Dikilato and Loew were found to share the same seniority date of October 13, 2003. After applying the tie-breaking criteria, the District determined that Loew should have a higher ranking and higher seniority than Dikilato.

(C) The District also changed the seniority date of respondent Aja Roberts from December 7, 2004, to April 7, 2004. Roberts still remains subject to layoff due to the reduction of multiple subject elementary classroom teachers and the change in her seniority date only affects her standing with respect to employment recall rights.

28. (A) Respondent Jean Henshall is an elementary teacher at Towers Elementary School. She holds a clear multiple subject credential in general subjects and a supplementary authorization in English (Not Highly Qualified). With her modified seniority date of December 5, 2003, Henshall remains subject to layoff pursuant to the reduction of multiple subject credentialed elementary classroom teachers.

(B) On April 28, 2010, Henshall submitted her college transcript to the District that demonstrates that she should be regarded as a highly qualified teacher under the No Child Left Behind Act. As a highly qualified teacher, she would be credentialed and competent to teach English and language arts to pupils in ninth grade and below and eligible to bump Catherine Cheney, an English teacher at Jefferson Middle School. Cheney has a seniority date of September 5, 2006, and possesses a clear single subject credential in English. The preliminary notice and Accusation issued to Cheney is subject to possible dismissal which would result in her retention.

(C) Because she did not file her transcript with the District and/or county office of education by March 15, 2010, however, respondent Henshall cannot be considered credentialed as a highly qualified English teacher and the District may rely upon her failure to timely file her transcript to terminate her employment in her credentialed service area as elementary classroom teacher. (Ed. Code, § 44949; *Campbell v. Abbott* (1978) 76 Cal.App.3d 796, 814-815.) As such, respondent Henshall is not entitled to bump respondent Cheney from her middle school English position and may be laid off pursuant to the reduction of multiple subject credentialed elementary teachers.

29. (A) Respondent Andrew Kissner is a geoscience teacher at Richardson Middle School. He possesses a clear single subject credential in geoscience and has a seniority date of September 6, 2005. He is the most senior of the three geoscience teachers subject to layoff due to the reduction of geoscience teachers by 3.0 FTE. With his single subject geoscience credential, Kissner is certificated and competent to teach life science but only in grades seven and eight and not in high school or grades nine through twelve.

(B) Certificated employee Marissa L. Whitmore is a life science teacher at Madrona Middle School. She has a single subject credential in biology and a supplemental multiple subject authorization. Her seniority date is also September 6, 2005. With her single subject biology credential, Whitmore is certificated and competent to teach life science in grades seven through twelve, or in middle school as well as high school. Whitmore is not subject to layoff inasmuch as her service area of life science is not being reduced by the resolution to reduce particular kinds of services. She was not served with a preliminary notice.

(C) Respondents' counsel contends that, because respondent Kissner with his geoscience credential can teach life science at the middle school level and both Kissner and Whitmore share the same seniority date, the District should first apply tie-breaker criteria and determine if Kissner has a higher ranking or priority than Whitmore. If he does have a higher ranking, then counsel argues that Kissner should be found eligible to bump into Whitmore's position. Because Whitmore was not given a preliminary notice and is being retained as a certificated employee, counsel argues that Kissner should likewise be retained under Education Code section 44955, subdivision (d). The argument of respondents' counsel is not persuasive, for under Education Code section 44955, subdivision (b), the Governing Board has discretion to determine the order of termination solely on the basis of the needs of the District and its students. Here, unlike respondent Kissner, Whitmore is not subject to layoff inasmuch as the Governing Board has determined not to reduce middle school life science teachers and, because neither she nor her service area is to be reduced, the District need not apply tie-breaker criteria to Whitmore. Since he has the same seniority date of September 6, 2005, and is not senior to Whitmore, respondent Kissner is not entitled to bump into Whitmore's life science position at the middle school under Education Code section 44955, subdivision (b), and may be laid off pursuant to the reduction of geoscience teachers.

30. (A) Respondent Patricia Lois Carvalho is a child care teacher at Hamilton Adult Center, which is part of the District's Adult Education program. She holds a clear physically handicap credential in special education and a clear multiple subject credential. She does not possess a CLAD certificate. Her seniority date is April 15, 2002. Carvalho received a preliminary notice and the Accusation due to the Governing Board's determination to reduce a 1.0 FTE child care teacher under the Adult Education program.

(B) In this proceeding, Carvalho admits that the scope of her physically handicap credential is limited and she does not have a CLAD certificate. She has not been able to transfer to another position within the District, such as a teaching position in special education or adult education. However, Carvalho claims that she can teach English as a

Second Language (ESL) in the Adult Education program due to her 30 years of teaching experience and academic coursework. Her claims are not persuasive. At the University of Kansas and California State University Los Angeles, she completed courses in education, the teaching of reading, and language arts, which are prerequisites for applying for a credential to teach ESL in an adult education program. As of March 15, 2010, Carvalho did not possess, and has not applied for, a credential authorizing her to teach ESL or adult education. She has no experience teaching adult education or ESL. In her current position, she provides child care and supervision to children, ages two and one-half to five years, while their parents attend adult education classes. As such, respondent Carvalho is not certificated and competent to teach ESL or adult education and is not entitled to bump a fellow certificated employee in adult or general education. The District may rely upon respondent Carvalho's lack of an appropriate credential in ESL or adult education as of March 15, 2010, and lay her off pursuant to the 1.0 FTE reduction of an adult education child care teacher. (Ed. Code, § 44949; *Campbell v. Abbott* (1978) 76 Cal.App.3d 796, 814-815.)

(C) Respondent Carvalho failed to demonstrate that the facts of her employment and credentialing situation warrant her retention under the doctrine of equitable estoppel. (See *City of Long Beach v. Mansell* (1970) 3 Cal. 3d 462, 489.) Carvalho did not show that she provided information to the District indicating that she was eligible for an ESL or adult education credential or that the District engaged in any conduct to discourage or prevent her from applying for a credential by March 15, 2010. In fact, the transcripts and testimony that Carvalho presented at the hearing demonstrated that she was not eligible for an ESL or adult education credential.

31. (A) Respondent Denise Leonard is a resource teacher for student achievement in the District's Title I program. Her seniority date is March 3, 2008. She possesses a clear multiple subject credential and administrative and CLAD certificates. Leonard is working in a federally-funded program for a two-year, limited term for the 2009-2010 and 2010-2011 school years. She is one of four student achievement resource teachers for the District and not working as a classroom or single subject teacher.

(B) As a student achievement resource teacher in the Title I program, Leonard provides guidance and coaching to teachers and staff at the District's schools which have greater than 25 percent of students at the federal poverty level. In general, a student achievement resource teacher coordinates efforts of teachers and staff to improve both teaching and learning. The resource teacher designs, organizes, and presents professional development and in-service training to teachers and staff so that they can facilitate student achievement and learning. The resource teacher models lessons, assists teachers and administrators in making decisions by use of data, assists in implementing and evaluating projects and programs, and helps to develop new programs. The resource teacher in student achievement helps disseminate information and demonstrate innovative practices.

(C) On or about July 17, 2009, respondent Leonard applied for promotion to be a resource teacher for student achievement. After being selected, Leonard and three other teachers underwent extensive training. In the summer of 2009, these four student

achievement resource teachers received two days of training on assessments, intake, and observation protocols. During the 2009-2010 school year, Leonard and her three colleagues have participated in approximately 40 days of training, which include sessions on daily curriculum planning, facilitating workshops, and coaching and collaborating with teachers and principals. In addition, the resource teachers have participated and gained experience in coaching teachers to be more effective. Without the extensive training and experience, a certificated employee with similar credentials would not be able to perform the duties of a student achievement resource teacher.

(D) Based on Findings 31(A) – (C) above, the evidence established that respondent Leonard is employed by the District as a resource teacher for student achievement for the Title I program and not as a multiple subject elementary classroom teacher. The Governing Board determined to reduce multiple subject classroom teachers in kindergarten through grade 6 but not student achievement resource teachers. The evidence further demonstrated that the District has a specific need for student achievement resource teachers for its Title I schools and respondent Leonard has undergone extensive training and possesses special training and experience to perform the duties of a student achievement resource teacher which other certificated employees and/or respondents with more seniority do not possess. As such, respondent Leonard is entitled to be skipped from the District’s layoff process pursuant to Education Code section 44955, subdivision (d), and should be retained as a student achievement resource teacher for the ensuing school year.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Jurisdiction exists for the subject proceedings pursuant to Education Code sections 44949 and 44955, based on Findings 1 – 31 above. All notices, accusations, and other related papers and reports required by these Education Code sections have been provided in timely manner and, as such, the parties have complied with the statutory requirements.

2. Cause exists pursuant to Education Code sections 44949 and 44955 to reduce by 128.0 full-time equivalent positions the concomitant number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services, as set forth in Findings 1 – 31 above. With respect to those respondents whose employment have been found to be terminable by the District and any other certificated employees who received notices but did not request a hearing, if any, the causes set forth in the Accusations relate

solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. Cause does not exist pursuant to Education Code sections 44949 and 44955 to terminate the employment of the following respondents and/or certificated employees: Richard Mulligan, Shawna Peacock, Anissa Shbaro, Andrea King, Holly Evans, Claudine Valot, Amber Martin, Jeffrey Jamile, Christine Christian, Michelle Senechal, Lanae Maeda, Lisa Kim, Timothy Magnus, Maria Ruth, Karen Kasper, Rubina Ahmed, Keri Kendall, Debra Owens, Candy Mintz-Moreno, Lori Perez, Katherine Johnson, Cheryl Thom, Robert Flanders, Carolyn Keeney, Kimberly Gauna, Allen Chin, Jamie Gendrano, April Pages, Denise Palmieri, Steve Jennewein, Rachel Kimmel, Judy Kawazoe, Lucia Doty, Jessica Cheung, Joyce Byean, Aja Elkind, Linsey Herrera, Salina Eick, Kevin Van Waardenbug, Marie Forel, Holly Hall, Lisabeth Diliberto, Michael Ellena, Christy Evans, Abraham Rivera, Keita Kadono, Sachie Horita, Grace Pak, Barbara Zondiros, Harold Rasmussen, Danny Jimenez, Douglas Raizk, Scott Peppard, Janet Chase, Michael Caporaso, Bridget Ely, James Estabrook, Christine Kruse, Brooke St. Hilaire, Nathan Jones, Courtney Matz, and Jennifer Radie inasmuch as the District withdrew or dismissed the Accusation against them, based on Findings 14 and 15, and respondent Denise Leonard, based on Finding 31 above.

4. Cause exists to change the seniority dates and/or seniority rankings of respondents Jean Henshall, Andrea Dikilato, Elizabeth Loew, Kathy Black, Kristin Kihara, and Aja Roberts, based on Finding 27 above.

5. Based on Findings 1 – 31, there is no certificated probationary or permanent employee with less seniority than any one of respondents or the certificated employees who is being retained by the District for the 2010-2011 school year to render services which any one of respondents or certificated employees is certificated and competent to render.

* * * * *

WHEREFORE, the Administrative Law Judge makes the following Order:

ORDER

1. The Accusation issued against respondents named in Finding 14 and 15 must be dismissed, based on Conclusion of Law 3 above, respectively. These respondents may not be given notice that their services will not be required for the 2010-2011 school year.

2. The Accusation issued against all of the remaining respondents is sustained, based on Conclusions of Law 1, 2, and 5 above. The District may give notice to these respondents, and each of them, in the inverse order of seniority that their services will not be

required for the ensuing 2010-2011 school year because of the reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955.

3 The District may give notice to any respondents and certificated employees, who were served with notices and/or accusations that their services will not be needed next year but did not file requests for hearing or did not appear at the hearing, that their services will not be required for the ensuing 2010-2011 school year because of the reduction or discontinuance of particular kinds of services pursuant to Education Code sections 44949 and 44955.

4. Before giving notice to respondents, the District shall further determine and take into account any additional positively assured attrition among certificated employees in deciding how many and when respondents should be terminated before the ensuing 2010-2011 school year.

Dated:

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings