

BEFORE THE  
GOVERNING BOARD  
ALPINE UNION SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2011030117

JILL ANDERSON, et al,

Respondents.

**PROPOSED DECISION**

On April 12, 2011, in Alpine, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Cathie L Fields, Attorneys at Law, represented the Alpine Union School District.

Georgiana D'Allessandro, Attorney at Law, represented the respondents set forth on Exhibit A attached hereto.

At the hearing, the District withdrew the layoff notice and dismissed the accusation against Kelly Stacks.

The matter was submitted on April 12, 2011.

**FACTUAL FINDINGS**

1. On March 15, 2011, Tom Pellegrino, Superintendent of the Alpine Union School District (hereafter, "the District"), made and filed the accusations against respondents in his official capacity.

2. Respondents are certificated employees of the District.

3. Before March 15, 2011, pursuant to Education Code sections 44949 and 44955, Mr. Pellegrino notified the Governing Board (hereafter, “the Board”) of the District of the Superintendent’s recommendation that respondents be notified their services will not be required for the ensuing school year. The Superintendent's notification to the Board set forth the reasons for the recommendation.

4. On or before March 15, 2011, each respondent was given written notice that the Superintendent had recommended that notice be given to respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing year. Each written notice set forth the reasons for the recommendation. The notices satisfied the requirements of sections 44949 and 44955. *San Jose Teachers Association, Inc. v. Allen* (1983) 144 Cal.App.3d 627, 632; *Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 803-04, distinguishing *Karbach v. Board of Education* (1974) 39 Cal.App.3d 355, 360-63.

5. Each respondent timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year. Accusations were timely served on respondents, and each respondent filed a timely Notice of Defense. All pre-hearing jurisdictional requirements have been met.

6. The Board took action in Resolution No. 03-02-11/01 to discontinue the following services for the 2011-12 school year:

K-8 Instruction	22.50	F.T.E.
Literacy Support	0.74	F.T.E.
4-5 Class Size Reduction	0.12	F.T.E.
English Learner	0.25	F.T.E.
Native American	0.25	F.T.E.
Assistant Principal	1.0	F.T.E.
<b>TOTAL CERTIFICATED POSITIONS</b>	<b>24.86</b>	<b>F.T.E.</b>

The resolution further provided:

“Qualifications for a position must include status of “highly qualified” for the subject or field within the meaning of the No Child Left Behind Act, and appropriate certification qualifications (including appropriate English Language authorizations). In no event may a more senior employee displace a less senior employee unless the more senior employee is both competent and credentialed for the entire assignment of the less senior employee.”

The services set forth above are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. *California Teachers Association v. Board of Trustees of the Goleta Union School District* (1982) 132 Cal.App.3d 32, 34-37 and cases cited therein. *See also San Jose Teachers Association v. Allen, supra* at

635-38, in which the court specifically rejected the reasoning of *Burgess v. Board of Education* (1974) 41 Cal.App.3d 571; *Zalac v. Governing Board* (2002) 98 Cal.App.4th 838, 853-54.

Furthermore, these services may be reduced because of budgetary difficulties. *Zalac v. Governing Board, supra*, and cases cited therein. The decision to reduce or discontinue the services is neither arbitrary nor capricious but rather a proper exercise of the District's discretion.

7. No certificated employee junior to any respondent is retained to perform services which any respondent is certificated and competent to render.

8. The reduction or discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees of the District as determined by the Board.

9. The Board considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

10. The Board established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. The Board provided the order of termination shall be based on the needs of the District and its students. The criteria were to be applied based on information on file as of March 14, 2011, one step at a time, until the tie was broken in accordance with the following:

“1. Persons with Clear (or Life) Credentials and authorizations allowing service in the following subject areas listed in order of priority:

- A. Special Education
- B. English Language Arts
- C. Math
- D. Science

2. Persons with Preliminary Credentials and authorization allowing service in the following subject areas listed in order of priority:

- A. Special Education
- B. English Language Arts
- C. Math

D. Science

3. Persons with Clear Credentials and EL certification in the following order of priority:

A. BCLAD

B. CLAD/SB 395 or equivalent

4. Persons with Preliminary Credentials and EL certification in the following order of priority:

A. BCLAD

B. CLAD/SB 395 or equivalent

5. Persons with multiple Clear Credentials.

6. Persons with one Clear Credential.

7. Persons with multiple Clear or Preliminary Credentials.

8. Persons with one Preliminary Credential.

9. Persons with multiple Clear, Preliminary or Intern Credentials

10. Persons with Intern Credentials

11. Persons with Master's Degrees in the following subjects listed in order of priority:

A. Special Education

B. English Language Arts

C. Math

D. Science

12. Persons with Bachelor's Degrees in the following subjects listed in order of priority:

A. Special Education

B. English Language Arts

- C. Math
- D. Science

- 13. Persons with Master's Degrees in subject(s) not listed in paragraph 11 above.
- 14. Years of total teaching experience
- 15. Last four digits of Social Security Number"

11. The District created a Seniority List which contains employees' seniority dates (first date of paid service), status, grade, site, assignment, position title, credentials, ELD, and educational level. The District used the Seniority List to develop a proposed layoff of the least senior employees currently assigned in the services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other employees.

12. Shannon McRae (seniority date 8/21/2002) has a multiple subject credential and teaches sixth grade math and science at a middle school. In May 2010, she began taking classes in special education and has now finished the preliminary coursework, leaving her with three classes to complete. She is eligible to become an intern but has not student taught because of time constraints. On June 28, 2010, she attended a meeting with District administrators who showed her programs offered by several colleges for obtaining a special education credential.

The District did not reduce special education in its 2011 resolution. Before the beginning of the 2010-2011 school year, the District hired several teachers to teach special education. All of them were junior to Ms. McRae. All of them had preliminary credentials in special education.

Ms. McRae testified at the hearing that she believes the District should have offered her an intern position in special education for the 2010-11 school year, and if she had been offered such a position, she would have accepted it in lieu of her sixth grade assignment.

Deann Jeffreys is the director of special education, pupil services, and educational projects for the District. She has been a principal, assistant principal, and teacher. In February 2011, she became the director of human resources for the District. She testified at the hearing that it is the practice of the District to hire an intern only if the District were unable to find a credentialed teacher. She testified that in special education, the District did not have any trouble finding credentialed teachers to teach the 2010-11 school year, and

accordingly, did not offer a special education assignment to Ms. McRae, who already was credentialed and teaching sixth grade math and science.

13. The District operates a Community Day School (hereafter “CDS”) which is an alternative program for primarily sixth through eighth graders who have been expelled from other schools or who are having trouble succeeding in mainstream middle school. In the past, the school has accepted fourth graders. There is no particular credential required to teach at the CDS.

Ms. Jeffreys testified that on occasion, an eighth grade student who was placed at CDS had been taking algebra. She testified the District had been informed by the County Office of Education and the California Commission on Teacher Credentialing that for an eighth grade student to be taught algebra, the teacher had to have a supplemental authorization or credential in math or have a HOUSSE certification.

Robert Monfort (seniority date 8/23/2005) has a multiple subject credential and a HOUSSE for VPSS/Algebra certification. He teaches at the CDS and is qualified to do so.

Stephanie Jacques (seniority date 8/23/2000) is senior to Mr. Monfort. She has a multiple subject credential and a HOUSSE for algebra certification. The District proposes to bump Ms. Jacques into Mr. Monfort’s assignment and lay him off. The District’s decision to bump Ms. Jacques into Mr. Monfort’s assignment at CDS and lay him off is appropriate.

14. Susan McCalley (seniority date of 8/25/99) has a multiple subject credential and a supplemental authorization in English. She teaches eighth grade English at a middle school. She does not have a supplemental authorization to teach algebra or a HOUSSE certification for algebra. She testified at the hearing that she has offered to teach math during summer school and have the principal observe her in an effort to obtain a HOUSSE certification. She has also taught algebra in the past but not for the District. She believes she has sufficient points to obtain HOUSSE certification and has asked for the certification but the District has not granted her request.

15. Robert Bordelon (seniority date 8/21/2002) has a multiple subject credential and a preliminary administrative services credential. He teaches sixth and seventh grade at the Alpine Natural Science Academy. He taught at the CDS from 2002 through 2004 and served as a summer school principal. He satisfied the HOUSSE requirement in the area of self-contained/elementary multiple subjects, but not in algebra.

Mr. Bordelon testified at the hearing that he believed that he could teach algebra at the CDS, but he recognized that he is less senior than Ms Jacques. He testified that he taught successfully at CDS for several years, was a Teacher of the Year while he taught there, and has a Crisis Intervention certification which signifies the training he received in dealing with children with behavioral issues. He believes the District is acting arbitrarily in requiring a special certification or authorization in algebra, and he believes the former assistant superintendent should have determined that he was qualified to teach at the CDS.

Ms. Jeffreys testified it was not the policy of the District to conduct observations of teachers who believe they are qualified for HOUSSE certifications, and instead require the teachers to obtain special authorizations. She testified that it was the intent of the HOUSSE certification process to allow teachers who were not new to the profession to meet the Highly Qualified standard under federal law, not to allow teachers to get an edge or to allow them to seek new positions.

16. Jill Anderson (seniority date 9/20/2007) has a multiple subject credential and a single subject physical education credential. She teaches PE at the sixth, seventh, and eighth grade levels at a middle school. She is the only teacher in the District with single subject credential in PE and for that reason, the District desires to skip her.

No respondent offered evidence to show that Ms. Anderson should not be skipped.

### LEGAL CONCLUSIONS

1. Jurisdiction in this matter relating to the elimination of 84.2 full-time equivalent positions exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Education Code section 44955 provides in relevant part:

...

*(b) [W]henver a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become necessary . . . 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) . . .

*The governing board shall make assignments and reassignments in such a manner that the employees shall be retained to render any service which their seniority and qualifications entitle them to render. . .*

. . .

(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 purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.*

To put it more succinctly, a senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. See *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469. Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. See *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; see also *Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.

3. The No Child Left Behind Act of 2001 (Public Law 107-110) was designed to improve the performance of U.S. primary and secondary schools by increasing the standards of accountability for states, school districts, and schools, as well as to provide parents with more flexibility in choosing which schools their children would attend. NCLB promoted an increased focus on reading and reauthorized the Elementary and Secondary Education Act of 1965 (ESEA). NCLB was signed into law on January 8, 2002.

A key goal of NCLB is that all students be taught by “highly qualified teachers” by the end of the 2005/06 school year. To become designated as “highly qualified,” the teacher must meet the following three criteria: Possession of a bachelor’s degree; possession of an appropriate California teaching credential; and demonstrated core academic subject area competence by means of examination, coursework, advanced certification, or completion of the California High Objective Uniform State Standard of Evaluation (HOUSSE) in the

subject area being taught. NCLB defines “core academic subject areas” as reading, English-language arts (including the English language development component of an adopted program), mathematics, science, foreign languages, civics/government, economics, arts, history, and geography.

Self-contained elementary school teachers (who typically hold a multiple subject teaching credential) must demonstrate competence in the areas generally taught as part of the elementary school curriculum. NCLB requires all elementary school teachers “new” to the profession who receive a multiple subject teaching credential or a multiple subject intern credential to demonstrate subject-matter competency by exam. (Tit. 5, Cal. Code of Regs. §6102.) For NCLB compliance, all “new” teachers who receive a Multiple Subject Preliminary, Clear, Professional Clear or an intern credential on or after July 1, 2002, must pass a CTC-approved subject-matter exam to become NCLB-compliant (even though they may not be required to do so in order to receive a credential). Currently, the CSET is the only CTC-approved exam for “new” school elementary teachers. “Not new” elementary school teachers have two options to demonstrate subject-matter competency: the exam option (passing any current or prior CTC-approved multiple-subjects exam), meeting HOUSSE standards through a process that evaluates the teacher’s knowledge and ability based on a high, objective uniform State standard of evaluation that meets federally established criteria.

For middle and high school teachers, there are options for demonstrating NCLB core academic subject competency. For “new” single subject credentialed teachers: the exam option requires the applicant to pass a CTC-approved subject-matter exam in the NCLB core academic subject area; the course work option requires (a) the completion of CTC-approved single subject matter program in the core area; (b) a major in the core area; (c) a graduate degree in the core area; (d) a major equivalent in the core area (32 non-remedial units earned with a grade of C or higher); or (e) advanced certification (National Board Certification) in the core area. “Not new” middle and high school teachers have four options to demonstrate subject-matter competency: the exam option (CTC-approved single subject matter program in the core area); the course work option (major or major-equivalent in the core area); advanced certification (National Board Certification) in the core area; or the successful completion of HOUSSE.

4. In *Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App. 4th 127, Bledsoe, a tenured teacher was laid off although he was senior to two teachers who were retained by the district to teach in the district’s community day school. The court determined that Bledsoe was qualified to teach at the community day school, but the district demonstrated it had a specific need for specific teachers to teach in its community day school and the two junior teachers had the special training and experience necessary to teach at that school while Bledsoe did not. The court pointed out that under section 44955, subdivision (d)(1), a district may have special needs for personnel to teach a specific course of study that go beyond base qualifications, but to retain a junior teacher, it must establish such teacher has special training and experience necessary to teach that course of study.

In this case, Ms. Jeffreys testified that there may be eighth grade students attending CDS who were taking algebra before they were placed at CDS, and in order to continue their

coursework in algebra, they have to be taught by teachers who are authorized to teach algebra to eighth grade students. She testified a teacher with a multiple subject credential could teach math, but not algebra to an eighth grade student, and that the District, based upon information it had received from the County Office of Education and the California Commission on Teacher Credentialing, determined that it would require a teacher to have either a supplemental authorization or credential in math, a HOUSSE certification or a verification process for special settings (VPSS).

Based upon Ms. Jeffreys testimony, the District established that it had a special need for personnel to teach a specific course of study, that is, algebra to eighth grade students at CDS, and it is relying upon additional credentials, authorizations, or certifications beyond the multiple subject credential that all teachers possessed in order to permit that teacher to teach algebra. Accordingly, the District established it could skip more senior teachers and retain a junior teacher to teach eighth grade algebra at CDS under section 44955, subdivision (d).

In addition to Ms. Jeffreys' testimony, the District introduced Board Resolution No. 05-12-10/01 that implemented the certificated layoff for the 2010-11 school year. The Board in that resolution determined that the District needed a certificated teacher who was qualified to teach algebra at CDS.

The District chose Ms. Jacques as the most senior teacher who met its requirements. This is consistent with Board Resolution No. 05-12-10/01. Ms. McCalley and Mr. Bordelon challenge that decision. Mr. Bordelon, however, is less senior than Ms. Jacques and could therefore not take that assignment over her. Ms. McCalley is senior to Ms. Jacques and could take that assignment if she were qualified.

It is well established that in considering a teacher's credentials and qualifications in a layoff proceeding, a District may ignore credentials acquired by an employee or registered by an employee after the March 15 deadline for issuing layoff notices. *Duax v. Kern Community College District* (1987) 196 Cal. App. 3<sup>rd</sup> 555, 567-68; *Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal. App. 3<sup>rd</sup> 796, 815. Ms. McCalley did not demonstrate to the District before March 15, 2011 that she was qualified to teach eighth grade algebra either by showing a supplemental authorization, HOUSSE certification (Tit. 5, Cal. Code of Regs. §6104), or VPSS (Tit. 5, Cal. Code of Regs. §6105).

Both Ms. McCalley and Mr. Bordelon sought to establish at the hearing that they met the requirements of HOUSSE but for one reason or another, the District had not done its part in helping them reach their objective. This proceeding is designed to review a district's actions in light of Education Code section 44955; it is not the forum for a teacher to establish qualifications under sections 6104 or 6105 of title 5. As of March 15, 2011, neither Mr. Bordelon nor Ms. McCalley were qualified to teach at the CDS. Accordingly, their dismissals must be upheld and the layoff of Ms. Jacques set aside.

5. Ms. McRae is a tenured teacher with a multiple subject credential teaching sixth grade math and science, but in May 2010 began taking classes towards obtaining a special education credential. She has not completed her coursework and does not have a

credential. However, she believes the District should have offered her a special education position for the 2010-11 school year and if it had and she had accepted it, she would not be subject to layoff for the next school year.

At the time the 2010-11 school year began, Ms. McRae had been taking special education classes for three or four months. Rather than offer her a position in special education, it hired a number of teachers who were credentialed to teach special education. This was consistent with District practice regarding the hiring of new teachers, and was neither arbitrary nor capricious. The District has the authority to make assignments under Education Code section 44955, subdivision (c). There is nothing improper for it to hire credentialed teachers to teach a subject such as special education, and assign Ms. McRae, a more senior teacher credentialed in another subject, to teach that subject even though she was taking classes towards a special education credential. Ms. McRae's argument is akin to what is called "inverse bumping" which was rejected in *Duax v. Kern Community College District supra*, 196 Cal.App.3d 555, 568-69. Her argument is rejected.

6. Ms. Anderson is the only teacher in the District with a single subject credential in PE and she teaches PE at the sixth, seventh, and eighth grade levels at a middle school. There is no reason why her services should not be retained. Her layoff is therefore set aside.

7. Any additional arguments offered by respondents have been considered and are rejected.

8. Cause exists under Education Code sections 44949 and 44955 for the District to discontinue particular kinds of services relating to 24.86 full-time equivalent positions. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the Accusation. It is recommended that the Board give respondents notice before May 15, 2011, that their services will no longer be required by the District.

ORDER

1. The Accusation served on respondent Kelly Stacks is dismissed.
2. The Accusations served on respondents Jill Anderson and Stephanie Jacques are dismissed.
3. The Accusations served on the respondents listed on Exhibit A are sustained. Notice shall be given to each respondent before May 15, 2011 that his or her services will not be required for the 2011-12 school year pursuant to the Board's resolution because of the reduction of particular kinds of services.

Notice shall be given in inverse order of seniority.

DATED: April 14, 2011

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ALAN S. METH  
Administrative Law Judge  
Office of Administrative Hearings

**EXHIBIT "A"**  
**ALPINE UNION SCHOOL DISTRICT**  
**FINAL LAYOFF LIST**

The following certificated personnel will receive a final layoff notice:

Robert Bordelon  
Kathryn Golden  
Aleta Greer  
Lori Hernandez  
Karen Hohimer  
Nancy Johnson  
Lee Ann Jones  
Tina Krawczyk  
Yvette Maier  
Marissa Manella  
Susan McCalley  
Shannon McRae  
Robert Monfort  
Emily Principe  
Tracy Rabasco  
Tamara Ripke  
Jennifer Sacks  
Louise Sager  
Jane Smith  
Kathryn Turner  
Sharon Turner  
Bridget Wetton