

BEFORE THE
GOVERNING BOARD OF THE
ADELANTO SCHOOL DISTRICT
SAN BERNARDINO COUNTY, CALIFORNIA

In the Matter of the Reduction in Force
Proceeding Involving:

OAH No. 2011031300

Tracy Aguayo, Jason Allen, Leticia Castro,
Melanie Caven, Pamela Cross, Sonya Davis,
Dawn Deponte, Krystal Duncan, Gia
Gauthreaux, Mary Green, Daveta Green,
Jennifer Harden, Darling Hernandez,
Yesenia Hernandez, Christine Joins,
Timothy Lang, Gina Lemming, Rosela Pena,
Krystina Ponce de Leon, Elizabeth Perez,
Amy Rankin, Maria Rivera, Viviana Robles,
Jenny Santa Maria, Julia Segura, Sylvia
Serrato, Kristen Vanderpool, Michelle
Waldon, Elisa Woods, Eric Zachary,
Cinnamon Olivarez, Erica Schatz, Rebecca
Bykoski, Darling Hernandez, and Roberta
Gross,

Respondents.

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Phelan, California, on April 20, 2011.

Mark Thompson, Attorney at Law, represented the Adelanto School District.

Kent Morizawa, Attorney at Law, represented the respondents.

The matter was submitted on April 20, 2011.

FACTUAL FINDINGS

The Adelanto School District

1. The Adelanto School District is located in San Bernardino County's High Desert, a dozen miles northwest of Victorville. The District covers many square miles and serves approximately 8,300 Kindergarten through 8th grade students residing in Adelanto, El Mirage, and parts of Victorville. The District maintains 10 elementary schools and two middle schools. The District employs about 350 certificated employees. The District currently has an annual operating budget of approximately \$48 million. Eighty-seven percent of the District's annual budget pays employee salaries and benefits.

2. The District is governed by an elected five-member Board of Education (the Governing Board). Darin Brawley is the Superintendent of Schools and the District's Chief Executive Officer. Superintendent Brawley is assisted by an administrative staff that includes Ross Swearingen, Assistant Superintendent of Human Resources.

The Fiscal Crisis

3. After Proposition 13 was implemented in 1978, public schools have obtained financing primarily from the State of California. A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event that is supposed to occur each year in late June. Before then, a school district's governing board, which has the duty to produce a balanced budget, must take steps to make certain that financial ends will meet if the worst-case financial scenario develops.

California's recent budget problems have had a crippling impact on the Adelanto School District and other public school districts. The District is currently in a "qualified" status, which means that the District may not be able to meet its financial obligations over the next two fiscal years. If the District is unable to meet its obligations, a "negative" certification will be assigned that will authorize the San Bernardino County Office of Education to intervene and take over the District's operations.

With regard to the budget for the 2011-14 school years, the District has projected a \$5 to \$12 million shortfall.

The District's Response

4. In response to the anticipated budgetary shortfall for the 2011-12 school year, District staff reviewed staffing ratios and class size. It determined that class size could be increased from 30 students per class to at least 32 students per class, thereby requiring fewer elementary school teachers. Other cost-cutting matters were considered, and the District will implement them in an effort to balance the budget. Declining student enrollment was not a factor in the Governing Board's very difficult decision to reduce staffing as one of several methods required to balance its budget for the 2011-12 school year.

On March 1, 2011, Superintendent Brawley recommended to the Governing Board that 27 full-time equivalent elementary teaching positions be eliminated for the 2011-12 school year, that two counseling service positions be eliminated for the 2011-12 school year, and that a Beginning Teacher Support and Assessment-Peer Assistance and Review (BTSA-PAR) Instructional Specialist position be eliminated for the 2011-12 school year. Superintendent Brawley also recommended that a corresponding number of certificated employees be given notice that their services would not be required for the 2011-12 school year.

Before formally making his recommendation to the Governing Board, Superintendent Brawley, on behalf of the District, entered into a memorandum of understanding with the Adelanto District Teachers Association to establish tie-breaking criteria to resolve ties between employees having the same seniority date “in an objective manner.” The MOU stated that the tie-breaking criteria were to be applied one step at a time to resolve seniority ties in the event of a certificated layoff. The first tie-breaking criterion was:

Highly Qualified Status under NCLB in area of assignment (employees presently in assignments not requiring HQ Status will be treated as HQ for purposes of tiebreak).

5. On March 1, 2011, following District Brawley’s recommendation, the Governing Board adopted Resolution No. 10-11-23. It provides:

WHEREAS, the Board of Education of the Adelanto School District has determined that it is in the best interests of the District and the welfare of the schools and the pupils thereof that the particular kinds of services set forth herein must be reduced or discontinued due to financial conditions; and

WHEREAS, it is the opinion of the Board that because of the aforementioned reason, the number of certificated employees of the District must be reduced; and

WHEREAS, this Board does not desire to reduce the services of regular certificated employees based upon reduction of average daily attendance during the past two years.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Adelanto School District as follows:

A. That the particular kinds of services set forth below be reduced or eliminated commencing in the 2011-2012 school year:

Elementary K-6 Teaching Services	27	F.T.E.
Counseling Services	2	F.T.E.
BTSA/PAR Instructional Specialist	1	F.T.E.
TOTAL CERTIFICATED POSITIONS	30	F.T.E.

B. That due to the reduction or elimination of particular kinds of services, the corresponding number of certificated employees of the District shall be terminated pursuant to Education Code section 44955.

C. That “competency” as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include: (1) possession of a valid credential in the relevant subject matter area; (2) “highly qualified” status under the No Child Left Behind. Act in the area to be assigned; and (3) an appropriate EL authorization (if required by the position).

D. That, as between certificated employees with the same seniority date, the order of termination shall be determined solely by criteria agreed to by the District and the Adelanto Teachers Association.

E. That the District Superintendent or designee is directed to initiate layoff procedures and give appropriate notice pursuant to Education Code sections 44955 and 44949.

6. Resolution No. 10-11-23 did not contain a “skipping” provision under Education Code section 44944, subdivision (d)(1), which would have authorized the retention of a junior employee over a more senior employee on the basis that the junior employee being retained possessed special training or experience necessary to teach a particular course of study which the more senior employee did not possess.

The Particular Kinds of Services

7. The kinds of services identified in Resolution No. 10-11-23 were services that could be reduced lawfully under the Education Code. The Governing Board’s enactment of Resolution No. 10-11-23 was neither arbitrary nor capricious; it was well within the Governing Board’s discretion. No particular kind of service was lowered to a level below those mandated by state or federal law. Resolution No. 10-11-23 was related solely to the economic crisis and the Governing Board’s duty to balance the budget.

The District's Seniority List

8. The District maintains a seniority list, a constantly evolving document that is updated as new certificated employees are hired and as other employees retire, resign, or otherwise become separated from service with the District. The seniority list is a spreadsheet that is organized from the District's most senior certificated employee to the most recently hired employee. The list contains each employee's seniority number, name, status (tenured, probationary, intern), seniority date (first paid date of probationary service), tie-breaking status (when applicable), current teaching assignment, current school site assignment, credential(s), supplemental credential, and English Language authorization (BCLAD, CLAD, LDS certification, or SB 1969 certification).

9. In February 2011, when it became apparent that a reduction in force proceeding might become required, the District circulated a seniority list to all certificated employees with the request that each employee review that list and verify or update his or her seniority information; if an employee did not return the list to District administrative staff with corrections, the staff concluded that the information set forth in the seniority list was correct. Assistant Superintendent Swearingen told certificated employees that the District would continue to accept updated information after March 15, 2011, and he represented to employees that any new information provided after March 15 would be considered in this layoff proceeding.

The Issuance of Preliminary Layoff Notices

10. Using the updated seniority spreadsheet, Resolution No. 10-11-23, and the MOU related to tie-breaking, District staff began the process of identifying those certificated employees who should receive preliminary layoff notices and those employees who should not. Whenever an employee was tentatively identified as being in line to receive a "regular" layoff notice, that employee's seniority and credentials were carefully examined to determine if that employee could "bump" into a position held by a more junior employee. Twenty-nine "regular layoff notices" were served, one less than the total number of FTEs because of the transfer of the employee serving in the BSTA-PAR Instructional Specialist position to a Dean position for the 2011-12 school year, which resulted in a vacancy.

To take into account the possibility of error, the District issued "precautionary layoff notices" to the five next most junior employees who provided the kinds of services that were being reduced. The District carefully examined the seniority and competency of these employees before issuing precautionary layoff notices.

11. Before March 15, 2011, the District staff identified the 34 certificated employees whose employment was or could be impacted by the implementation of Resolution No. 10-11-23. The District timely served on each of those 34 employees written notice advising that the Superintendent had recommended that their services would not be required for the upcoming school year. The recommendation was not related to respondents'

fitness or abilities as certificated employees. The formal notice and the accompanying documents set forth the reasons for the recommendation.

The certificated employees served with the regular and precautionary layoff notices were advised of the right to a hearing, and each of them was warned that the failure to submit a written request for a hearing by March 23, 2011, would constitute a waiver of the right to participate in the reduction in force proceeding.

All prehearing jurisdictional requirements were met.

The Administrative Hearing

12. On April 20, 2011, the record in the reduction in force proceeding was opened. Jurisdictional documents were introduced. The caption was amended. An opening statement was presented on the District's behalf. Opening statements were not provided on behalf of any respondent and were waived. Sworn testimony was taken; documentary evidence was received; a written stipulation to jurisdictional facts was reached; closing argument was given; the record was closed; and the matter was submitted.

The Reduction in Force Proceeding

13. Assistant Superintendent Swearingen established that the adoption of Resolution No. 10-11-23 was the result of a budgetary crisis, was not the result of a decline in attendance, was in good faith, and was in the best interest of the District and its students. The District complied with all jurisdictional requirements. The District used seniority, credentials, and competence as the basis to allow "bumping" into other positions, and the District retained the services of senior, competent, and appropriately credentialed employees over more junior employees. The tie-breaking criteria were applied to determine the seniority status between employees who were hired on the same day, and the application of those criteria, was in the best interest of the District and its students.

14. Assistant Superintendent Swearingen testified that Mary Green (seniority number 335), who holds a multiple subject teaching credential and has a seniority date of February 9, 2010, had returned to service within 39 months of her break in service and thus retained a tenured position and was not subject to layoff in this proceeding.

15. Assistant Superintendent Swearingen established that the District had withdrawn layoff notices issued to Krystina Ponce de Leon (seniority number 325), Rebecca Bykoski (seniority number 265), and Sylvia Serrato (seniority number 271). Each of these employees established after March 15, 2011, that her first date of paid probationary service was earlier than was set forth in the seniority list the District used to issue preliminary layoff notices; by reason of their updated seniority dates, their credentials, and their competence, Ms. Ponce de Leon, Ms. Bykoski, and Ms. Serrato were not subject to layoff.

Unfortunately, this determination resulted in the need to serve final layoff notices on the three least senior individuals who had been served with precautionary layoff notices and who were being displaced by Ms. Ponce de Leon, Ms. Bykoski, and Ms. Serrato.

16. Assistant Superintendent Swearingen testified that final layoff notices should not be issued to Roberta Gross (seniority number 286) and Jason Allen (seniority Number 287), each of whom received a precautionary layoff notice, because these individuals held sufficient seniority, appropriate credentials, and competence to retain their employment.

17. Assistant Superintendent Swearingen testified about an unusual situation involving an existing employee – Scott Swinburne (seniority number 257) – who is currently on an extended leave of absence and who likely will not return to employment with the District in the 2011-12 school year.

Mr. Swinburne's current teaching assignment is held by Heidi Biewend, whose employment as a probationary employee was terminated in a previous reduction in force proceeding. Ms. Biewend's current employment with the District is under a long term substitute teacher contract. As a result of her employment with the District before 2010-11 school year and as a result of her long term substitute employment with the District this year, Ms. Biewend will likely obtain tenured/permanent employment status under Education Code section 44918. However, because Ms. Biewend currently serves as a temporary employee, the District could not name Ms. Biewend as a respondent and she is not subject to a layoff in this reduction in force proceeding.

Some type of agreement exists between the District, the teachers' association, and Ms. Biewend through which the District has tentatively agreed to employ Ms. Biewend in the 2011-12 school year; the validity of that agreement is in question, but its validity is outside of the jurisdiction of an administrative law judge in this proceeding; further, implementation of that agreement is contingent upon an event that has yet to occur, i.e., Ms. Biewend's completion of a long term substitute teaching contract in which she provides services for at least 75 percent of the number of days that regular schools are in session within the District.

In response to the suggestion that Ms. Biewend's tentative employment agreement with the District for the 2011-12 school year might be unlawful and might invalidate the service of preliminary layoff notices on employees who are senior to Ms. Biewend, the District argued that there was no evidence that established that the District would employ Ms. Biewend in the 2011-12 school year and that the validity of her employment with the District for the 2011-12 school year was not properly before the administrative law judge and did not impact this reduction in force proceeding. This argument was reasonable.

No respondent in this reduction in force proceeding specifically claimed that the preliminary layoff notice issued to him/her should be withdrawn or that the accusation should be dismissed by reason of the situation involving Ms. Biewend.

18. The District hired Robin Brown (seniority number 284) and Elizabeth Perez (seniority number 296) on August 8, 2007. Before March 15, 2011, the District's seniority list included information that Ms. Brown, a 4th grade teacher, held both a multiple subject teaching credential and a single subject Physical Education credential. Before March 15, 2011, the District was aware that Ms. Perez, a Physical Education teacher, held a single subject credential in Physical Education, but it was not aware that she held a Certificate of Eligibility for the Administrative Services Credential that was issued by the Commission on Teacher Credentialing on December 6, 2010. The certificate of eligibility was on file with the County Board of Education before March 15, 2011, but it was not on file with the District before then.

Given the information the District had in its file on and before March 15, 2011, and based upon the application of the tie-breaking criteria set forth in the MOU before it issued preliminary layoff notices, the District determined that Ms. Brown was more senior than Ms. Perez and that Ms. Brown, whose elementary teaching position was being eliminated, was credentialed and competent to teach Physical Education. On this basis, Ms. Brown was entitled to bump into Ms. Perez's teaching assignment. A preliminary layoff notice was not issued to Ms. Brown. A preliminary layoff notice was issued to Ms. Perez. A preliminary layoff notice was not issued to Mariela Ramos, whose seniority date is also August 8, 2007, a P.E. teacher who holds a single subject Physical Education teaching credential.

Sometime after March 15, 2011, Ms. Perez notified the District that she held a Certificate of Eligibility for the Administrative Services Credential that was issued on December 6, 2010. Historically, the District treated this certificate as a credential for retention purposes. When Ms. Perez's certificate is considered, Ms. Perez moves up on the seniority list; she has more seniority than Ms. Ramos (seniority number 290); Ms. Perez should not have been bumped; Ms. Ramos (who was not served with a preliminary layoff notice) should have received the preliminary layoff notice; and Ms. Perez should be permitted to retain her employment.

The District argued that it was entitled to issue preliminary layoff notices based upon the credentialing information that was on file with the District on March 15, 2011, the last day preliminary layoff notices could be served. As noted above, Assistant Superintendent Avila told certificated employees that the District would continue to accept updated information after March 15, 2010. Moreover, Assistant Superintendent Swearingen and the District considered information submitted by Ms. Ponce de Leon, Ms. Bykoski, and Ms. Serrato in reaching the decision to retain the services of these individuals. Ms. Perez should receive the same treatment.

19. Cinnamon Olivarez (seniority number 291) has a seniority date of August 8, 2007. She holds a multiple subject teaching credential and teaches 6th grade.

Ms. Olivarez asserted that her seniority date should be earlier than August 8, 2007, by reason of her service as a long term substitute teacher for the District in the 2006-07 school year. She started that school year as a substitute teacher for Erin Marccuson in January 2007,

and then became a substitute teacher for Melba Metchnikoff, who passed away in March 2007. In all, Ms. Olivarez worked 66 percent of the days that the regular schools were in session that school year. Ms. Olivarez completed the 2006-07 school year as a “permanent” teacher in Ms. Metchnikoff’s classroom, preparing lesson plans, administering standardized testing, and providing other services that, according to Ms. Olivarez, could only be provided by an employee with a permanent, rather than temporary, assignment. The District employed Ms. Olivarez on a temporary substitute contract, and she was paid as a long term substitute teacher. Ms. Olivarez claimed that if she were given an earlier seniority date in January 2006 or March 2006, as she deserved, the District should not have issued a preliminary layoff notice to her.

The District correctly determined that Ms. Olivarez’s first paid date of probationary service occurred on August 8, 2008. Before that date, Ms. Olivarez was a temporary teacher. She did not provide credentialed services for at least 75 percent of the days that the District’s regular schools were in session; she was employed on a temporary contract; and she was not paid the same wages as a certificated employee holding a permanent position. Ms. Olivarez did not gain seniority rights by reason of any error the District may have made in permitting her to administer standardized testing.

20. Pamela Cross (seniority number 294) has a seniority date of August 8, 2007. She holds a multiple subject teaching credential and provides services as an English Language Development and Language Arts Support at a middle school.

Ms. Cross asserted that her seniority date should be earlier than August 8, 2007, by reason of her service as a long term substitute teacher for the District in the 2006-07 school year. She worked that school year as a substitute teacher for Erin Marccuson, and in May 2007, began working as a substitute teacher for a regularly employed teacher who was not returning to work for the District the following year. Ms. Cross checked out materials for the classroom and provided other services that were required by reason of the vacant position. She believed that her seniority date should relate back to sometime in May 2006. The District employed Ms. Cross on a temporary substitute contract, and she was paid as a substitute teacher. Ms. Cross claimed that if she were given an earlier seniority date in May 2006, as she deserved, the District should not have issued a preliminary layoff notice to her.

The District correctly determined that Ms. Cross’s first paid date of probationary service occurred on August 8, 2007. Before that date, Ms. Olivarez was a temporary teacher. She did not provide credentialed services for at least 75 percent of the days that the District’s regular schools were in session; she was employed on a temporary contract; and she was not paid the same wages as a certificated employee holding a permanent position.

21. The District bumped Dianne Burkhard (seniority number January 22, 2007), a Kindergarten teacher with a multiple subject teaching credential, into a middle school Math assignment being held by Michelle Waldon (seniority number 318), who holds a multiple subject teaching credential and teaches middle school Math by virtue of a Governing Board authorization. Ms. Burkhard is eligible for a Governing Board authorization in Math and has

equal competence to Ms. Waldon. Neither Ms. Burkhard nor Ms. Waldon is “highly qualified” under the No Child Left Behind Act to teach Math.

Ms. Waldon claimed that the District’s bumping criteria precluded her from being bumped because Ms. Burkhard was not “highly qualified” under NCLB. In this regard, the Board’s bumping criteria provide that “competency” necessarily includes “(1) possession of a valid credential in the subject matter; (2) *“highly qualified” status under the No Child Left Behind Act in the area to be assigned*; and (3) an appropriate EL authorization (if required by the position).” (Emphasis added.)

The application of the bumping criteria in the manner suggested by Ms. Waldon would run afoul of Education Code section 44955, subdivision (b), which requires that the services of no permanent employee be terminated by the retention of any employee with less seniority to render services the more senior employee is certificated and competent to render. The application of the Governing Board’s competency criteria in this instance would be unreasonable and contrary to Education Code section 44955. The District properly permitted Ms. Burkhard to bump into the position being held by Ms. Waldon because Ms. Burkhard is the more senior employee and because each of them holds the same credentials and qualifications to teach Math.

LEGAL CONCLUSIONS

Statutory Authority - Reduction in Force Proceedings

1. Education Code section 44949 provides in part:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

. . .

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the

employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing . . .

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the

cost of the administrative law judge, shall be paid by the governing board from the district funds . . .

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee. . . .

(e) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

2. Education Code section 44955 provides in part:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified . . . and no probationary employee shall be deprived of his or her position for cause other than as specified . . .

(b) Whenever . . . 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 by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render . . .

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of

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

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

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

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

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or

health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

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

Jurisdiction

3. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied as to all respondent employees.

The Reduction of Particular Kinds of Services

4. A school board may determine whether a particular kind of service is to be reduced or discontinued, and it cannot be concluded that the governing board acted unfairly or improperly simply because it made a decision it was empowered to make. (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 174.)

Competence

5. The Education Code leaves to a school board's discretion the determination of whether in addition to possessing seniority an employee must also be competent to be employed in a vacant position. The term "competent" relates to an individual's specific skills or qualifications including academic background, training, credentials, and experience, but it does not include evidence related to on-the-job performance. (*Forker v. Board of Trustees* (1984) 160 Cal.App.3d 13, 18-19.) An employee holding a special credential or needed skill, if such credentials or competence are not shared by a more senior employee, may be retained even though it results in termination of a senior employee. (*Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648, 655.)

Information Filed with the County Superintendent after March 15, 2011

6. A credential recorded with the County Superintendent after March 15 cannot be used by a teacher to assert bumping or reassignment rights. The practical reason behind this rule is that layoff notices must be given, if at all, by March 15 of any school year to effect a reduction in teaching staff for the ensuing school year. Should a teacher be allowed to present a certificate to the governing board after March 15 and thereby obligate the board to continue to employ that teacher, the board would by that date be precluded from serving a layoff notice to a junior teacher. This would result in the board being forced to retain an extra teacher on staff when the entire purpose of the layoff procedure is to allow the

reduction of staff positions because there are fewer students to instruct or fewer services being offered. (*Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, 567-568.)

7. In this matter, the District allowed credentialing information to be used even if it was not on file with the District by March 15, 2011 so long as the credential was obtained before March 15, 2011. The District's practice in this regard was not unlawful, improper, or inequitable so long as it was applied to all credentialed employees.

Cause Exists to Give Notice to Certain Employees

8. As a result of the Governing Board's lawful reduction of particular kinds of service, cause exists under the Education Code for the District to give final notice to those respondents who are identified hereafter that their employment will be terminated at the close of the current school year and that their services will not be needed by the district for the 2011-2012 school year.

Determination

9. The charges set forth in the Accusation were sustained by the preponderance of the evidence except as set forth herein. Resolution No. 10-11-23 related to the welfare of the District and its pupils. Other than in the case of Ms. Perez, the District's administrative staff made necessary assignments and reassignments in such a manner that the most senior credentialed employees were retained to render services that their seniority and qualifications entitled them to render.

RECOMMENDATION

1. It is recommended that the Governing Board of the Adelanto School District issue final notices to the following certificated employees: Tracy Aguayo, Leticia Castro, Melanie Caven, Pamela Cross, Sonya Davis, Dawn Deponte, Krystal Duncan, Gia Gauthreaux, Mary Green, Daveta Green, Jennifer Harden, Darling Hernandez, Yesenia Hernandez, Christine Joines, Timothy Lang, Gina Lemming, Cinnamon Olivarez, Rosela Pena, Amy Rankin, Maria Rivera, Viviana Robles, Jenny Santa Maria, Erica Schatz, Julia Segura, Kristen Vanderpool, Michelle Waldon, Elisa Woods, Eric Zachary.

2. It is recommended that the Governing Board dismiss the accusations filed against Jason Allen, Roberta Gross, Elizabeth Perez, Krystina Ponce de Leon, Rebecca Bykoski, and Sylvia Serrato.

DATED: April 20, 2011

JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings